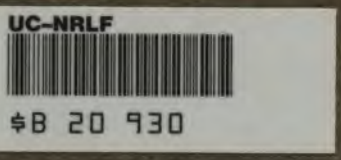

THE LAW & THE AMERICAN CHILD

By

Thomas Charles Carrigan, Ph. D.

A DISSERTATION SUBMITTED TO THE FACULTY OF CLARK UNIVERSITY, WORCESTER, MASS., IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY, AND ACCEPTED ON THE RECOMMENDATION OF G. STANLEY HALL

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By THOMAS CHARLES CARRIGAN, A. M., Clark University

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(1) INTRODUCTION

Beneath the Children's Institute at Clark University, there is a statue of the late George Frisbie Hoar—a former Trustee

[1]The writer is indebted for assistance to President G. Stanley Hall, Dr. William H. Burnham, Dr. Theodate L. Smith and Librarian Louis N. Wilson, of Clark University, also to Thomas J. Homer, Esq., of Boston, Rev. John J. McCoy, LL. D., of Worcester, Dr. George E. Wire, of the Worcester County Law Library, and Librarian Robert K. Shaw, of the Worcester Free Public Library.

of the University, a United States Senator and a Jurist. To some interested in Child Welfare this statue symbolizes that courage, hope and humanity which characterized the Senator's life and which were manifested in his prevention of the deportation of the Syrian children in 1901, and in 1903 led the second session of the Fifty-seventh Congress to enact Sec. 37 of Chap. 1012 of the United States Statutes, which provides "Whenever an alien shall have taken up permanent residence in this country and shall have filed his preliminary declaration to be a citizen and thereafter shall send for his wife or minor children to join him, if said wife or either of said children shall be found to be affected with any contagious disorder, and it seems that said disorder was contracted on board the ship in which they came, such wife or children shall be held under such regulations as the Secretary of the Treasury shall prescribe until it shall be determined whether they can be permitted to land without danger to other persons; and they shall not be deported until such facts have been ascertained." (19, 2, 298.)

Near the northern terminus of the same street on which the University is located, stands the Worcester County Court House. Within a few steps beyond the entrance, the visitor comes to an arch on which is emblazoned: "Here Speaketh the Conscience of the State Restraining the Individual Will."

On Thursday, January 26, 1911, in an address to the young men and women of the Worcester Evening High School another who measures up to the best traditions of the Massachusetts Supreme Court Bench, Mr. Justice Rugg, said: "I believe those words of Senator Hoar at our Court House make the best definition of law extant." Law, then, in the United States at the beginning of this second decade of the twentieth century, may be assumed to be that legislative and judicial expression of the public conscience by which the individual is governed. And as our people are the State, it would seem to follow that our laws are never better nor worse than the American people demand.

The term "child" in this study is synonymous with the legal term "infant" and is intended to include all the years of minority.

The following pages contain a brief survey of some laws that concern the American child. It is not the purpose of this paper to follow out any of these laws in detail, to do so would require a separate volume for each of several of the laws outlined. The recency of the laws mentioned in this study is noted under the topics through references to the bibliography. Statutes, later than those cited by some of the authorities enumerated in the bibliography, have been inserted. Ob-

viously no claim can be made that the latest revisions have been presented—the legislatures of most of the states are now in session and new laws are being enacted daily.

(2) MARRIAGE

Just as infancy is the legal status of persons under age, marriage is the legal status of husbands and wives. After a valid marriage man and woman are husband and wife, and their offspring are legitimate children.

Professor Stimson in his "Popular Law Making" says "It is always to be remembered that the law of marriage, and divorce as well, was originally administered by the Church. Marriage was a *sacrament;* it brought about a status; it was not a mere secular contract, as is growing to be more and more the modern view. Indeed, the whole matter of sexual relations was left to the Church, and was consequently matter of sin and virtue, not of crime and innocence. Modern legislation has, perhaps, too far departed from this distinction. Unquestionably, many matters of which the State now takes jurisdiction were better left to conscience and to the Church, so long as they offend no third party nor the public." (39, 324-5.)

Capacity of Parties in General. A person may be generally incapable of contracting marriage because of (a) want of age; (b) want of mental capacity; (c) want of physical and sexual capacity; (d) relationship by blood or marriage with the other party; (e) being of a different race from the other party; and (f) having been married before and that marriage not being at an end.

(a) Want of age. At common law the marriage of a male over fourteen and a female over twelve was valid. At least "thirty states, including the District of Columbia have by statute prescribed a higher age limit for marriageable consent, and in those states the marriage of a minor below the common law age of consent and the statutory age of consent is voidable by the minor on arriving at the statutory age of consent.

"In Minnesota and Wisconsin the statutory age of consent is fixed at 18 for the male and 15 for the female, but the statute does not declare that marriages under such ages, shall be void, therefore the courts have held them to be voidable, only. In the remaining 17 states the ages of consent remain the same as at common law. Three of these states, Kentucky, Louisiana and Virginia, having adopted said ages by statute" (1,1136).

The lowest statutory age for a male is fourteen. The states in which marriage can be contracted by a male at fourteen years are Kentucky, Louisiana, and Virginia. The

states in which the statutory limit is fifteen years are Kansas and Missouri. Those in which it is sixteen years are the District of Columbia, Iowa, North Carolina, Texas and Utah. Those in which it is seventeen years are Alabama, Arkansas, and Georgia; those in which it is eighteen years are Arizona, California, Delaware, Idaho, Illinois, Indiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, West Virginia, Wisconsin and Wyoming; and twenty-one in most of the remaining states.

Age limit for females. The lowest age at which a valid marriage can be contracted by a female is twelve years. The states in which the statutory limit of twelve obtains are Kansas, Kentucky, Louisiana, Missouri and Virginia. In the following states it is fourteen years: Alabama, Arkansas, District of Columbia, Georgia, Iowa, North Carolina, Texas and Utah. The states in which the statutory limit is fifteen are Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota and Wisconsin.

The states in which the statutory limit is sixteen years are Arizona, Delaware, Illinois, Indiana, Michigan, Montana, Nebraska, Nevada, New Hampshire, Ohio, West Virginia and Wyoming. The statutory limit is eighteen years in Idaho, Massachusetts, and New York. In other states for which no minimum marriageable age is given the provisions of the common law seem to apply.

The age below which parental consent is required for the marriage of a male is twenty-one years in forty states and territories in three states it is 18, and in one state 16. In Tennessee it is sixteen years, and in Idaho and North Carolina eighteen years.

In Georgia, Michigan and South Carolina no age is fixed for parental consent for the male. The age below which parental consent is required for the marriage of a female is fixed at 21 in 9 states, at 18 in 34 states (including D. C.), and at 16 in 3 states. (1.1137.) It is sixteen in Maryland and Tennessee. It is twenty-one years in Connecticut, Florida, Kentucky, Louisiana, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wyoming. No statutory limit is established in New Hampshire, New York, and South Carolina. In all the other states and territories it is eighteen years. In Massachusetts, permission from the Probate Court is required for the marriage of a male under eighteen or of a female under sixteen.

(b) *Mental Capacity.* The marriage of the insane, persons absolutely *non compos*, was always void both at Common law and the Church law as well. By recent laws Connecticut and Minnesota prohibit the marriage of an epileptic, imbecile,

or feeble-minded woman under 45 years of age or cohabitation by any male of this description with a woman under 45 years of age, and marriage of lunatics is void in the District of Columbia, Kentucky, Maine, Massachusetts, Nebraska.

(c) *Physical and Sexual Capacity.* Marriage of impotent persons has always been void; Michigan prohibits the marriage of persons having sexual diseases; by recent laws Indiana and California refuse marriage licenses to persons under the influence of intoxicants or drugs or infected with certain transmissible diseases; and "finally most startling of all the proposal looms in the future to make every man contemplating a marriage submit himself to an examination, both moral and physical, by the state or city officials as to his health and habits, and even that of his ancestry, as bearing upon posterity." (39.327-8.)

(d) *Consanguinity and Affinity.* Marriage between first cousins is forbidden in Alaska, Arizona, Illinois, Indiana, Kansas, Missouri, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington and Wyoming, and in some of them is declared incestuous and void, and marriage with step-relatives is forbidden in all states except Florida, Hawaiian Islands, Iowa, Kentucky, Minnesota, New York, Tennessee and Wisconsin. In Hawaii, Porto Rico and the Philippines marriages are prohibited within the fourth degree of consanguinity.

(e) *Miscegenation.* Marriages between whites and persons of negro descent are prohibited and punishable in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia. Marriages between whites and Indians are void in Arizona, North Carolina, Oregon, and South Carolina; between whites and mongolians in Arizona, California, Mississippi, Oregon and Utah.

(f) If one has been married before and that marriage is not at an end, he of course cannot contract another marriage. If he goes through the form of a second marriage under such circumstances, he is guilty of bigamy, which is an offense punishable in all states. In nearly all states and territories the statutes provide that a person may contract marriage after the disappearance of a former husband or wife (the former marriage not having been dissolved by divorce or annulled) if the latter has been continuously absent for a specified number of years and has not been known to be living during this period. The length of time which the absence without news has continued is three years in Florida, Iowa, and New Hamp-

shire. It is two years in Pennsylvania. It is seven years in Maine, Maryland, Massachusetts, Mississippi, Missouri, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Virginia, West Virginia and Wisconsin. It is five years in Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming.

Marriage Licenses. "Wisconsin seems to be the only state requiring the license to be taken out several days before the marriage. Only two states, Louisiana and Maine, appear to have any provision for the filing of objections, by parents, guardians or others, to a contemplated marriage. In Louisiana the license issues immediately upon the making of the application. In Maine notice of the intention to apply for a license must be made at least five days before the issuing of the license." (1.1138.) New Hampshire has just adopted this Maine plan. All the states and territories, except South Carolina, require marriage licenses, and also, except South Carolina require every marriage solemnized to be reported to some official specified by law. However, in Maine, Maryland, Iowa and Kansas a license is not required for the marriage of members of the Society of Friends, or Quakers. In Pennsylvania, Delaware, Maryland, Georgia and Ohio the parties, instead of securing a license, may have recourse to the publication of banns. There are also other minor exceptions in certain states.

3. Divorce

The American people are divided on matters pertaining to divorce. Those opposed to any divorce, that carries the legal right of remarriage during the life time of the divorced husband or wife, sometimes combine with those urging the fewest legal causes of divorce, and the coalition presents a united front against the exponents of "the open door" in divorce legislation. Some of the divorce reformers maintain that there are insidious influences planning to amend the marriage vows, so as to read "Till *divorce* doth us part;" that such a modification can be expected of an age that has legally evoluted or devoluted or devilized unto progressive fragmentary polygamy and polyandry on the installment plan. They tell us that divorce is a modern institution; that is divorce by the secular courts; that such "divorce as the Roman Church, recognized (without the right of remarriage) or was granted by the act of Parliament, was the only divorce existing down to the year 1642, when one Hannah Huish was

divorced in Connecticut by the General Court, 'with liberty to marry again as God may grant her opportunity,' and about that time the Colony of Massachusetts Bay enacted the first law (with the possible exception of one in Geneva permitting divorces by ordinary courts of law" (39, 326). The divorce reformers allege that the advance in present methods beyond those of the seventeenth century is shown by many a modern Hannah Huish, who believing that God helps her who helps herself, makes her own "opportunity" by keeping on her waiting list at least one "minute man," who, too often, is himself waiting anxiously for some divorce mill to grind out the welcome refrain—"Off with the old, on with the new." They call our attention to the pathetic figure in some of these cases, *the child* learning the shifting designations for his father's former wife—his mother, his father's present wife—his stepmother, his mother's former husband—his father, his mother's present husband—his stepfather, with perchance a few other stepmothers and stepfathers intervening to complicate the task. They assure us that whatever the pedagogical value in the mastery of such a lesson, the child's ideals of "family life," "home," "mother," and "father"can hardly contribute much to his moral uplift before or his country's after his arrival at manhood. The adherents of latitude in divorces, on the other hand, have their array of arguments for their position. One or two typical replies are: "Many clergymen argue that to have only one cause, adultery, is the worst law of all, as it drives the parties to commit this sin when otherwise they might attain the desired divorce by simple desertion" (39,323). Again they ask, "How can the child be possibly benefited in a home of parents, that are agreed that their particular "marriage is a failure," but are willing to try other marriages? Moreover, the difference in condition, education, religion, race and climate is so great throughout the Union that it is unwise, as well as impossible to get all of our forty-eight States to take the same view on this subject, the Spanish Catholic as the Maine free-thinker, the settler in wild and lonely regions as the inhabitant of the old New England town over-populated by spinsters" (39, 323). "Nevertheless, it is not questionable that modern American legislation, particularly in the code States, in California, New York, and the west generally, is based upon the view that marriage is a simple contract, whence results the obvious corollary that it may be dissolved at any time by mutual consent. No state has thus far followed the decision to this logical end, on the pretended assumption that the rights of children are concerned but the rights of children might as well be conserved upon a voluntary divorce as after a scandalous court proceedings.

One possible view is that the Church should set its own standard, and the State its own standard, even to the extreme of not regulating the matter at all except by ordinary laws of contract and laws for the record of marriage and divorce and for the custody, guardianship, support, and education of children, which would include the presumption of paternity pending an undissolved marriage, but all divorce to be by mutual consent. It is evident to any careful student of our legislation that we would be rapidly approaching this view but for the conservative influence of Massachusetts, Connecticut, Pennsylvania, New Jersey, and the South, and but for the efforts of most of the churches and the divorce reform societies. Which influence will prove more powerful in the end it is not possible to predict." (39.325.)

Weak must be the grievance, and arrested must be the ingenuity of that husband or wife, in some parts of our country, who cannot discover relief in one or more of the thirty-five causes for divorce now on the statute books of the states of the Union.

Causes of Divorce

South Carolina has no divorce for any cause.

The following table of causes for absolute divorce and some of the States recognizing each cause is of interest:

(1) Abandonment or desertion—In all except New York, District of Columbia, North Carolina and South Carolina.
(2) Adultery—Sexual Immorality—In all states but South Carolina.
(3) Attempt to take Life—Illinois, Tennessee and Louisiana.
(4) Causes deemed sufficient by courts—Washington.
(5) Civil Death—Rhode Island.
(6) Consanguinity—Pennsylvania, Georgia, Florida and Mississippi.
(7) Crime—Conviction or Imprisonment—All except Maine, Rhode Island, New York, New Jersey, Maryland, District of Columbia, North Carolina, South Carolina and Florida.
(8) Crime against nature—Alabama.
(9) Cruelty—Extreme Cruelty—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Delaware, Georgia, Florida, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Kentucky, Tennessee, Mississippi, Louisiana, Oklahoma, Texas, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California.
(10) Defects of Disposition—Violent temper—Florida and Kentucky.
(11) Fraud or Fraudulent Contract—Connecticut, Pennsylvania, Georgia, Ohio, Kansas, Kentucky, Oklahoma and Washington.
(12) Fugitive from Justice—Virginia and Louisiana.
(13) Habitual Use of Drugs—Maine, Massachusetts, Rhode Island and Mississippi.
(14) Illegality of Marriage—Bigamy—Pennsylvania, Florida, Ohio, Illinois, Missouri, Kansas, Tennessee, Mississippi, Arkansas, Oklahoma and Colorado.
(15) Illicit carnal intercourse—Maryland, Virginia and West Virginia.

(16) Incapacity to contract Marriage—Mental Incapacity—Georgia, Mississippi, Idaho, Utah and Washington.
(17) Indignities and Defamation—Pennsylvania, Missouri, Tennessee, Louisiana, Arkansas, Wyoming, Washington and Oregon.
(18) Intolerant Religious Belief—New Hampshire and Kentucky.
(19) Intemperance—Habitual Drunkenness—Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, Georgia, Florida, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon and California.
(20) Lack of real consent to marriage—Duress or force—Pennsylvania, Georgia, Kentucky and Washington.
(21) Loathsome Disease—Kentucky.
(22) Lewd Conduct—Kentucky.
(23) Misconduct—Rhode Island and Wisconsin.
(24) Neglect of duty—Ohio, North Dakota, South Dakota, Kansas, Oklahoma, Montana, Idaho and California.
(25) Neglect to provide—Maine, Vermont, Massachusetts, Rhode Island, Delaware, Indiana, Michigan, Wisconsin, Nebraska, Tennessee, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, and Washington.
(26) Other causes—Void and voidable Marriages (not otherwise specified)—Rhode Island and Maryland.
(27) Personal unfitness to contract marriage—Impotency—All except Vermont, Connecticut, New York, District of Columbia, South Carolina, Iowa, South Dakota, South Dakota, Texas, Montana, Idaho, and California.
(28) Pregnancy before Marriage—Virginia, West Virginia, North Carolina, Georgia, Iowa, Missouri, Kansas, Kentucky, Tennessee, Alabama, Mississippi, Wyoming, New Mexico and Arizona.
(29) Previous Divorce in Another State—Florida, Ohio and Michigan.
(30) Presumption of Death—Rhode Island and Connecticut.
(31) Refusal to move to State—Tennessee.
(32) Vagrancy—Missouri and Wyoming.
(33) Voluntary Separation—Rhode Island, after ten years; Kentucky, after five years.
(34) Violence endangering life—Pennsylvania, Iowa, Missouri, Kentucky, Alabama and Arkansas.
(35) Want of age—Delaware.

Limited Divorces

Limited divorces or separations from bed and board are granted in Alabama, Arkansas, Delaware, District of Columbia, Georgia, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota (in favor of wife only), Rhode Island, New Jersey, New York, North Carolina, Pennsylvania (in favor of wife only), Rhode Island, Tennessee (in favor of wife only), Vermont, Virginia, West Virginia and Wisconsin.

Children of the Divorced

The United States Census Bureau issued in 1910 a report of the results of a compilation of statistics of divorces granted in the courts in the United States for a period of twenty

years: being from 1887 to 1906, both years inclusive. In the cases included in the report, in 376,694 or 39.8 per cent. of the whole number, there were children of the parties to the divorce, and in 380,608 or 40.2 per cent, no children were reported. In 188,323 cases or 19.9 per cent, no mention was made of children and the presumption is that no children were involved.

Alimony

At least eighteen states have statutory provisions on alimony which make the wife "equally with husband, liable for the maintenance of the minor children, while in others such liability of the wife will attach only where she has been adjudged the guilty party. A few statutes provide that the separate estate of the wife shall be taken into consideration, and that alimony may be refused if she has sufficient property for her needs. A tendency has appeared in the newer legislations to limit the amount which either party may receive to an alimentary pension payable only so long as it may be needed." (29, 151-2.)

A synopsis of the marriage and divorce Statutes of the various states is contained in "The law of Marriage and Divorce" by Frank Keezer, Boston, 1906, pages 193-343.

(4) Employment of Mothers

Diligent search has failed to find a single law in any American state regulating when a pregnant mother shall cease working or how soon she may return to her employment after her child is born. On this subject Professor Stimson writes as follows:

"Now all these laws arbitrarily regulate the hours of labor of women at any season without regard to their conditions of health, and are therefore far behind the more intelligent legislation of Belgium, France, and Germany, which considers at all times their sanitary condition, and requires a period of rest for some weeks before and after childbirth. The best that can be said of them, therefore, is that they are a beginning. No law has attempted to prescribe the social condition of female industrial laborers, the bill introduced in Connecticut that no married woman should ever be allowed to work in factories having failed in its passage." (39.219.)

The following (from the Quarterly Bulletin of the International Labor office) is a fairly complete list of the foreign countries having regulations:

(1) The period in Spain after confinement is from 4 to 6 weeks, and another phrase in the law adds, "A woman in the

eighth month of pregnancy may ask leave to cease work, which shall be granted if medical opinion supports her application." (24.2.20.)

(2) In Austria also a law provides that in stone quarries, lime, sand and gravel pits women who are approaching their confinement shall not be employed. (24.3.139.)

(3) In the German Empire the law provides that women shall not be employed for eight weeks, including the time before and after confinement, and at least six weeks must intervene between childbirth and return to work. (24.3.335.)

(4) In Italy the prohibited period is one month after confinement, and in the rice fields one month before and after confinement. A medical certificate as to the length of pregnancy is required, and the law adds, "It shall be sufficient if such certificates show that the women in question have not yet reached the last month of their pregnancy." (24.1.486, 24.2.580 and 24.3.183-195.)

(5) Following is a list of the countries which prohibit the employment of women after confinement, and the length of the prohibited period.

Denmark—4 weeks, unless by permission of medical officer. (24.1.181.)
Appenzell, Canton of Switzerland, 6 weeks. (24.3.124.)
Argentina—30 days. (24.3.28.)
Berne, Switzerland—from 4 to 8 weeks. (24.3.119.)
Bosnia and Herzgovina—4 weeks. (24.4.7-193.)
Norway—6 weeks. (24.4.346.)
New Zealand—4 weeks. (24.4.30.)
Roumania—3 to 4 weeks. (24.4.46.)

(6) In most of these countries the woman's position must be kept open for her until her return. In most of these cases where the state provides sick insurance, the women are permitted to apply for this assistance during the period of prohibited employment.

(5) En ventre Sa Mere

"A child is the living offspring of human parents either before or after birth. A child *en ventre sa mere* is a child while yet unborn. Although the point was formerly in doubt, it is now settled in this country, that from the time of conception the infant is *in esse*, for the purpose of taking any estate which is for his interest, whether by descent, devise or under the statute of distributions; provided, however, that the infant is born alive, and after such a period of fœtal existence that its continuance in life might reasonably be expected." (2.10.625.) Beck, Medical Jurisprudence, Vol. I, P. 407 (12 ed.), says, "As a general rule, it seems now to be generally conceded that no infant can be born viable, or capable of

living, until one hundred and fifty days, five months after conception. There are however cases mentioned to the contrary. In such cases we should recollect that females are liable to mistakes in their calculations and that conceptions may take place at various times during the menstrual intervals, and thus vary the length of gestation. Such early births are at the present day very generally and very properly doubted. . . . We may . . . . . conclude that between five and seven months, there have been instances of infants living, though most rare; and even at seven, the chance of surviving six hours after birth is much against the child," and see Chitty, Med. Jur. 406. On the other hand, by statute, a child born ten months after the death of the father comes within the rule. Massie v. Hiatt, 82 Ky., 314. (11.10.626.) See also "(7) Birth." The divorce libel of Schwartz v. Schwartz now pending in Boston, Suffolk County, Massachusetts, is remarkable. The libellant, the wife, in petitioning for the dissolution of the marital tie also requests the Court to grant her the custody of her unborn child.

(6) Abortion

"Abortion is defined to be the delivery or expulsion of the human fœtus prematurely, or before it is yet capable of sustaining life. . . . The defendant's intent to cause or produce an abortion controls and constitutes an essential element of the offense." (11.1.170.) At common law it is a criminal offense to cause or procure an abortion upon a woman who has become quick with child, but as to whether a common law offense is committed by causing or procuring, with the consent of the woman, an abortion before such a quickening, there is a conflict of authority. To the effect that such an abortion constitutes no criminal offense are the following authorities:

Iowa—Hatfield v. Gano, 15 Iowa, 177; Maine—Smith v. State, 33 Me., 48; Maryland—Lamb v. State, 67 Md., 524; Massachusetts—Com. v. Bangs, 9 Mass., 387; Michigan—People v. McDowell, 63 Mich., 229; New Jersey—State v. Cooper, N. J. L., 52; New York—Evans v. People, 49 N. Y., 86.

But contra, see the following cases:

Arkansas—State v. Reed, 45 Ark., 333; North Carolina—State v. Slagle, 83 N. C., 630; Pennsylvania—Mills v. Com., 13 Pa. St., 631.

"Quick with child" and "with quickchild" are synonymous terms. The words "big" and "great" are tantamount to the word "quick." In Evans v. People, 49 N. Y. 86, 90, Allen, J., says: "Quick is synonymous with 'living', and both are

the opposite of 'dead.' The woman is not pregnant with a living child until the child has become quick. If the child is a living child from the instant of conception, then all the authorities, medical and legal, are sadly at fault in their attempts to distinguish between mere 'pregnancy' and 'pregnancy with a quick child,' and legislators have been laboring under the same hallucination in legislating upon the subject for all the acts passed in reference to abortion in this country and in England recognize the fact that the child does 'quicken,' that is, becomes endowed with life, at a certain period, longer or shorter, after conception, and that there is a period during gestation when although there may be embryo life in the fœtus there is no living child. And to the same effect see Smith v. state, 33 Me., 48; Com. v. Parker, 9 Met. (Mass.), 263. (11.1.172.) Dwight in his Medical Jurisprudence writes "By the term quickening are described certain peculiar sensations usually noted by the mother at about four and one-half months following conception." (12.147.) To many, the better rule would be that of the Catholic Church, namely, that there is life "*ipso momento conceptionis*" and that an abortion even then is murder. The woman on whom the abortion is produced is not a principal. In some states, however, by statute, the woman is made punishable; but her offense is separable from that of the person administering the drug or performing the operation. But in Smith v. Gaffard, 31 Ala., 45, it was held that a statute prohibiting the administration by any person, to a pregnant woman, of any drug or substance with intent to procure her miscarriage, does not make it an offense for a woman to take a drug with intent to produce a miscarriage. (11.174.) Section 15 Chap. 212, Revised Laws of Massachusetts provides that whoever administers, advises, prescribes, aids or assists in an abortion shall, if the woman dies, be punished by imprisonment in the state prison for not less than five nor more than twenty years; and if the woman does not die, by imprisonment in the state prison for not more than seven years and by a fine of not more than two thousand dollars. Massachusetts and other states have provided penalties of "three years imprisonment and a fine of not more than a thousand dollars for advertising, giving or conveying any notice, hint or reference to any person, or to the name of any person, from whom, or to any place where anything or means whatever, or any advice or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child." (Mass. Revised Laws—Chap. 212—Sec. 16.)

(7) Birth

Continuing the subject treated under topic (5) *En ventre sa mere*, as to the degree of life necessary for inheritance Dwight says: "Modified by certain conditions, that will be spoken of later, a child whether of full term or not, whether or not affected by disease or conditions which make it impossible that life shall be prolonged, providing there is evidence of life, is capable of inheriting. It is not necessary that respiration should be established. It is not necessary that the child should cry. Neither is it necessary to prove that a complete, independent circulation was established. Pulsation of the umbilical cord after delivery, a slight active motion in one of the extremities, or pulsation in an artery, is in itself proof of life to a sufficient extent for the purposes of inheritance. It is usually necessary to demonstrate that complete birth has taken place. Some, however, have held that the partial birth of a living child is all that is necessary. Such rulings, however, have been contradicted, as they bring up rather difficult questions as to the extent of birth necessary to inherit. Crying and respiration may occur before birth is complete, but this evidence is of doubtful value." (12.198.)

"Not a single state, not even a single city, in the entire United States possesses complete registration of births. Boston claims to have about the best, only 96 per cent. . . . The era of modern sanitary civilization may be marked by the dates upon which various countries began to record infant mortality. Some countries—China, Turkey and the United States—even yet possess no records of infant mortality. Unless the American people wake up, China and Turkey will have satisfactory data for infant mortality long before the United States. . . . The omission of the United States from the international data for births is on account of our almost entire lack of effective birth registration.

"Talk about the registration of births in the United States. Why for not more than one-half (55.3 per cent) of the total population of the United States is there even fairly accurate registration of deaths alone. Many states—practically the entire South—make no more records of the deaths of their citizens than if they were cattle; not even so much, for blooded cattle have their vital events recorded, while human beings are thrown into their graves without a trace of legal registration. And even the states that have fairly good registration of deaths, and that have had such registration for many years, grossly neglect the equally important, or even more important, registration of births. . . . Our native born children of native parents are as worthy of protection as the children of any other country, and the children born to foreign parents

in this country should have the same safeguard as about their cradles as if they had been born in a foreign land. America should not mean barbarity in its relation to infant life. The ægis of protective civilization should rest upon the infant of American birth, and a proper record be made of the vital events of his life for his personal protection, legal use and for the most important sanitary information which can alone be obtained from such records." (Dr. Cressy L. Wilbur, in Report of the Committee on Birth Registration. Proceedings of The American Association for Study and Prevention of Infant Mortality, Johns Hopkins University, Baltimore, November 9-11, 1910.)

(8) Midwives

In the following states midwives are examined and licensed by law:—Connecticut, District of Columbia, Illinois (violators prosecuted) Indiana, Minnesota, Missouri, New Jersey, Ohio, Wisconsin and Wyoming (practice exempted in cases of emergency). The practice of midwives is exempted in Arizona, Arkansas, Idaho, Kentucky, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Virginia and West Virginia. The states having "no law" regulating the practice of midwives are Alabama, California, Colorado, Delaware, Florida, Georgia, Iowa, Kansas, Louisiana (law does not apply to midwives in rural districts and plantation practice), Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas (no specific law, examination provided for those who wish to practice obstetrics alone). The act "does not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing," Utah (no specific law. Those desiring to practice obstetrics are examined and licensed, but the law permits practice "in case of emergency," and it exempts "persons practicing obstetrics in communities where there are no licensed practitioners"), Vermont and Washington. (23.103-431.)

(9) Infanticide

By infanticide is understood "the destruction of life in newborn children." The law assumes, as a rule, that an infant whose dead body was found was born dead unless proof is brought that the opposite is the case. This crime is one of the most common among all nations, especially among the poorer classes, and these problems are very frequently presented for medico-legal investigation. There are three questions

which are perhaps of the greatest importance in connection with them. Under the English as under that of most nations, the crime of murder does not vary, and is subject to the same punishment whether the victim is an infant or of more mature age. It is treated under a different heading in works on legal medicine, as it presents different problems for solution. The law requires that it should be proved:

1. That sufficient uterine age and development has been reached to allow of a separate existence on the part of the child.
2. That the child was born alive.
3. Proof of the manner of death. (12.173.)

(10) Prevention of Blindness

Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, and West Virginia have laws requiring cases of ophthalmia neonatorum to be reported. In Connecticut midwives and nurses are liable to a fine of $200 or imprisonment not to exceed six months, or both, "Should one or both eyes of the baby become inflamed, swollen or reddened at any time within two weeks after birth and the midwife or nurse fails to report in writing within six hours to health officers or legally qualified practitioner of city, town or district where parents reside that such inflammation, etc., exists." Minnesota requires the parent as well as the nurse and midwife to report within twelve hours to local health officers if one or both eyes of an infant, under two months, become inflamed, reddened and diseased. Ohio has a law making the treatment of ohpthalmia neonatorum by midwife or general practitioner without notifying an occulist or sending the child to a hospital, a misdemeanor with a heavy fine and an imprisonment clause. Unfortunately the law is reported as "not operative." (43.52.2047-2056.)

(11) Vital Statistics

The American Medical Association Bulletin, Vol. 6, No. I, September 15, 1910, contains a model bill on vital statistics patterned, in the main, after the Pennsylvania law. (42.) Section 6 requires that stillborn children or those dead at birth shall be registered as births and also as deaths. Midwives, under this model bill, are not allowed to sign certificates of death for stillborn children. Section 13 provides that the physician or midwife, "and if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager

or superintendent of public or private institutions in which the birth occurred, to notify the local registrar, within ten days after the birth, of the fact that a birth has occurred." Section 21 makes failure to register cause of death, false certification of cause of death and failure to file a proper certificate of birth misdemeanors punishable by fines of from five to two hundred dollars. This model bill has become the law of some twenty states, and has been endorsed by the following: The Census Department, Department of the United States Government, the American Medical Association, the American Bar Association, the American Association for the Study and Prevention of Infant Mortality and in 1910 by the general officers of the American Federation of Labor." Registration of births, is urged, as "a necessary part of any plan for the study of infant mortality, because without such registration we have no means of ascertaining definitely the relation between the annual death rate and birth rate. In other words it enables us to find out where we are. It is an essential part of any plan for the reduction of infant mortality because the prompt registration of births increases the possibility of preventing certain infantile diseases and blindness. The registration of births is also of the utmost importance for legal reasons, as a means of establishing the identity of the individual." (Leaflet issued by the American Association for Study and Prevention of Infant Mortality, September 1, 1910.) When it is remembered that Bulletin 104 of the year 1909 of the United States Bureau of Census shows that the death of babies less than a year old constitutes one-fifth of our total mortality, it would seem that even the most indifferent and the laziest will not begrudge the effort necessary to record the child's entrance into and his departure from this world. Yet so much notice is denied to the child in too many states.

(12) Legitimacy and Illegitimacy

Under the common law only the child born in wedlock was legitimate. The Canon law, which is the law of the Church, decreed that the child born before the marriage became legitimate on the marriage of the parents, and as "Canon law lies at the base of much American law" (27.356), the rule has come to be universal in the United States that a child whose parents marry after its birth, no matter how long (39.140), becomes legitimate. So also, a child is legitimate when born within a competent time after the termination of marriage by death or divorce (11.5.525). And finally most of our states consider that a child, born during a void marriage

entered into in good faith, is legitimate. Of course even the child born during marriage may be shown to be illegitimate and it must be remembered that any legal presumption of legitimacy stands only until the contrary is shown. However, our courts have placed the burden of proof on the one alleging illegitimacy and on the grounds of public policy and decency ordinarily will not allow any father or mother to testify that a child, presumed to be legitimate, is, as a matter of fact, illegitimate. Thus far it will be noted that marriage controlled legitimacy. But our legislators have conceived or known of situations where the father of an illegitimate child might not want or be able to marry the mother but was anxious to remove the stain of illegitimacy from the child. Such a legal process is called legitimation, and differs from adoption which usually refers to strangers in blood. Professor Stimson's American Statute Law reads: "In several states, the father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such (with the consent of the wife, if married) into his family, and otherwise treating it as legitimate, thereby rendered it legitimate for all purposes"—at least in California, Nevada, Dakota and Idaho. (37.756.) "In several states, the putative father (if he was unmarried at the birth of the illegitimate child) has a process in court by which he might legitimate the child"—in North Carolina, Tennessee, Georgia, New Mexico, Alabama and Mississippi. (37.757.) In 1887 Maine enacted the law that an illegitimate child is heir if the father adopts him into his family, or in writing makes acknowledgment that he is the father before a justice or notary; and he inherits from the kindred of such father, whether lineal or collateral, and they from the child, as if legitimate: Maine 1887, 14. (38.98.) Massachusetts permits the father to adopt his illegitimate child with the consent of its mother, and thereby make it his heir. This is considerable progress since "all the earls and barons answered with one voice that they would not change the laws of England." (39.40.) Florence Kelley in 1882 in commenting on the changes in the legal status of the illegitimate child since Blackstone, wrote: "So far is his condition assimilated to that of the legitimate child that the statement is now true that the chief legal disadvantage of the illegitimate child is his inability to inherit." (26.96.) The mother has a superior right to the custody of her illegitimate child but she may lose her right by abusing or neglecting the child. The putative father seems to be entitled to the custody against all but the mother. However, the best interests of the child will be the controlling factor in deciding the question of custody in any court. (11.5.637.) The statutory liability of

the putative father for the support of the legitimate child is to-day universal. Alabama, Georgia, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Wisconsin authorize their courts to imprison the putative father as one means of enforcing an order for the maintenance of the illegitimate child. (11.5.670.)

(13) Milk Laws

Dr. Henry L. Coit, of Newark, New Jersey, seems to have been the first to urge legislation "on the subject of milk production designed for clinical purposes." Abandoning the effort to get a state law on this subject Dr. Coit organized a Medical Milk Commission which worked independently of state authorities as a professional body and from year to year his plan was duplicated in various parts of the country until now there are seventy-two such Milk Commissions. In many instances these commissions have started a crusade through municipal activities for the improvement of the general supply of milk. These commissions are professional bodies without pecuniary interests or commercial relations with the production of milk and have as their general object, the obtaining of milk suitable for sick-room purposes and infant feeding. The Medical Milk Commissions has been recognized by the Government through the Departments of Agriculture and the Marine Hospital Service, both departments having issued bulletins on the history of the "Pure Milk Movement." Four years ago, the Medical Milk Commissions then at work (of which there were only twenty-two) were federated for the purpose of extending the propaganda and influencing the organization of this movement in other centres of population. This work has been carried on from the office of the Secretary of this federation, by Dr. Otto P. Geier, of Cincinnati. Both Dr. Coit and Dr. Geier insist that "certified milk has a definite meaning as outlined in the plans for the original Commission and it has not only received federal recognition but in three states has been protected by law." These three states are Kentucky, New York and New Jersey, and the Michigan legislature has a similar bill before it for passage. The New Jersey Law as the law of the state in which certified milk had its origin, is considered the most comprehensive and is entitled "An Act providing for the incorporation of medical milk commissions and the certification of milk produced under their supervision. "This act will be found in State of New Jersey Laws of 1909. Four sections of this law follow:

"8 Every such association shall have power to enter into agreement in writing with any dairyman or dairymen for the production of milk under the supervision of such association for the purposes enumerated in section one hereof and to prescribe in such agreement the conditions under which milk shall be produced, which conditions, however, shall not be below the standards of purity and quality for 'Certified Milk' as fixed by 'The American Association of Medical Milk Commissions,' and the standards for milk now fixed or that may hereafter be fixed by the Board of Health of the State of New Jersey. In any contract entered into by any such commission with any dairyman or dairymen, it may be provided that such medical milk commission may designate any analsyts, chemists, bacteriologists, veterinarians, medical inspectors or other persons who in its judgment may be necessary for the proper carrying out of the purposes of such commission for employment by such dairyman or dairymen and to prescribe and define their powers and duties, and that such persons so employed by such dairyman or dairymen may be discharged from employment whenever such medical milk commission may request such discharge or removal in writing.

"9. All containers of any kind or character used in the carrying or distribution of milk produced by any dairyman or dairymen under contract with any medical milk commission shall have attached thereto or placed thereon a certificate or seal bearing the name of the Medical Milk Commission with which such dairyman or dairymen producing such milk shall be under contract, which certificate shall have printed, stamped or written thereon the day or date of the production of the milk contained in any such container and the words 'Certified Milk' in plain and legible form.

"10. The work and methods of any Medical Milk Commission organized under this act and of the dairies on which milk is produced under contract with any such commission shall at all times be subject to investigation and scrutiny by the Board of Health of the State of New Jersey. The Secretary of said State Board of Health shall be an ex-officio member of every milk commission organized under this act.

"11. No person, firm or corporation shall sell or exchange or offer or expose for sale or exchange as and for certified milk, any milk which is not produced in conformity with the methods and regulations prescribed by and which does not bear the certification of a medical milk commission incorporated pursuant to the provisions of this act or organized or incorporated in some other state for the purposes specified in section one hereof, and which is not produced in conformity with the methods and regulations for the production of certified milk from time to time adopted by the American Association of Medical Milk Commissions, and which is below the standards of purity and quality for certified milk as fixed by the American Association of Medical Milk Commissions; and any such person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor."

The Milk Commission appointed by the Mayor of Philadelphia enumerates the essential points (see The Worcester Gazette, Saturday, March 18, 1911).

"Of course, pure milk—comparatively speaking—is to be had. But as a rule there is a menace all along the line.

"Take, for instance, the farm where milk is produced. Unless modern and improved sanitary principles are enforced, the beginning of the danger is right there.

"Then comes the railroad journey to the city.

"Next the handlers come in and eventually the milk is served at the home.

"Now there is not a step from farm to customer that is not of the highest importance to guard.

"The cow must be milked by cleanly hands in a cleanly place.

"The milk must never for a moment be exposed to unsanitary conditions, for milk is a tremendous absorbent of everything that is impure.

"It must be sent to railway station in a cooled condition, and it must be transported to the city platform in cooled cars.

"The dealer must transfer the cans in wagons that will maintain the low temperature.

"Finally the milk must be delivered in a cooled state, Then it is up to the housekeeper to see to it that the bottles shall be placed in iced receptacles.

"To put it briefly, milk must be under constant supervision and direction and control from the time the cow yields her milk to the time of delivery to the purchaser.

"That is the problem that confronts not only the commission but City Councils and the Legislature. For there must be hearty co-operation from start to finish.

"When we can have milk under such constant inspection we shall be sure of having a pure supply. And that is precisely what we must have. No matter what the cost is, we must have it."

"True, Pure Milk at any cost. Every baby in every home throughout the country demands it, and when the King commands his subjects must obey. But more than that the public health and posterity demand it."

The Report of the United States Commissioner of Education for the year ending June 30, 1910, Vol. I, at page 141, says that "in order to provide a supply of pure milk, cream, and butter for pupils who procure luncheons at the schools, the St. Louis School board prepared for the year 1909-10 a special contract embodying such sanitary precautions as they thought necessary to insure purity in the dairy products supplied." (44.1.141.) If the St. Louis plan is copied generally throughout the country the movement for pure milk is destined to be successful at an earlier date than has been expected.

(14) Compulsory School Attendance Laws

The statutory provisions relating to compulsory education and child labor throughout the United States are compiled in the Report of the United States Commissioner of Education for the year ending June 30, 1910, Vol. I, pages 148-153 inclusive, and in Monroe's Cyclopædia of Education, Vol. I, pages 289-93 inclusive. The Cyclopædia contains an excellent article of about ten pages on "Compulsory Attendance" by Dr. David Snedden, Massachusetts Commissioner of Education. Recourse should be had to Dr. Snedden's article for much information that cannot be condensed into the space assigned to the subject in this paper. The compilations mentioned show that Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Texas have no compulsory education law. In North Carolina and Tennessee legislation

applies only to certain sections, and in Virginia "compulsory attendance law is optional with the voters of any county, city or town (36.1.293), with these exceptions: "A. Throughout almost the entire United States some school attendance is compulsory from 7 or 8 years of age to 14. B. Massachusetts, New York, Idaho, New Hampshire and others require certain educational qualifications, otherwise attendance is compulsory to 16. The 1908 law of New Jersey sets an upper limit of 17 for all who have not completed the eight grades; those finishing the elementary school course may not leave until 15. C. A number of states require, especially in cities, that children under 16 must attend school regularly unless definitely employed. Illinois, Maryland, Pennsylvania, and Missouri (St. Louis and Kansas City only) are examples. D. Laws on compulsory education have frequently been nullified because the amount of attendance each year was not specified, and consequently evasions were easy. Even yet some states prescribe a minimum amount, *e. g.*, Iowa, 16 consecutive weeks; Missouri (outside of St. Louis), not less than half the term; Nebraska, two thirds of term. The majority of states having well-developed legislation now making attendance obligatory for the entire term during which school is in session. E. Recently special legislation in some states provides for compulsory attendance from 8 to 20, at State School for Deaf. Nebraska, Minnesota, and North Carolina (for whites), have somewhat similar legislation. In early stages poverty of parents paved the way for exemptions, but the modern tendency is away from this. Many states provide for supplying free books to needy children. In Ohio and Colorado boards of education must give aid in clothing where it is necessary. In some large cities philanthropy has secured the provision of scholarships for those whose parents need aid in keeping children at school." (36.1.293.)

The maximum penalty on parents for neglect to comply with the compulsory education law is as follows:

Delaware, first offense: $2 or 2 days imprisonment, subsequent offenses: $5 or 5 days imprisonment; Connecticut, $5 for each week's absence; Maryland $5; Pennsylvania, first $2, subsequent $5; West Virginia, first $2, subsequent $5; Virginia, first $10, subsequent $20; District of Columbia, Illinois ("and stand committed until paid"), Iowa, Massachusetts, Montana, New Hampshire, North Dakota, Ohio, Rhode Island, South Dakota ("costs and stand committed till paid") fall within the group authorizing the imposition of a fine of $20. In Kentucky the delinquent parent can be fined for the first offense $20 and $50 for subsequent offenses. The $25 group includes Arizona, Arkansas, Colorado, Kansas,

Nebraska, North Carolina, Vermont, Washington and Wyoming. Nevada has a penalty of $100 for the first and $200 with costs for subsequent offenses. The states where parents can be sentenced to imprisonment are New York, which has a provision for five days or $5 for the first offense and 30 days and $50 for subsequent offenses; Missouri, 10 days and $25; New Mexico, 10 days or $25; Oregon, 10 days and $25; California, 25 days and $50; Maine, 30 days or $25; Minnesota, 30 days or $50; Indiana, 90 days and $25; Michigan, 90 days and $50; Wisconsin, 3 months and $50; and Idaho judges can make stubborn parents take notice by imposing a sentence of 6 months and a fine of $300.

"The American states are obviously moving toward certain standards in compulsory attendance which will partly depend upon development of additional school facilities. For example, child labor legislation is increasingly closing up industries to youths under 16. The raising of educational standards will compel many children to attend school until they are 16. The state will provide for those who are demonstrably needy, rather than allow dependent parents to withhold from children their educational heritage. The increasing appreciation of the need of vocational education will result in the provision of special school facilities for imparting either the whole or part of this education. It is not improbable that the advanced position of Germany in this respect (*i. e.* compelling children from fourteen to eighteen to give part time to continue education of a vocational or other character), will be imitated. Special schools will be provided for defectives and delinquents, and attendance at these made obligatory. Ultimately a complete system of registration of all children must be provided, to be carried on by attendance officers, and centralized in each limited school area, not only for the enforcement of attendance but for obtaining compliance with child labor legislation, and the provision of medical or other aid." (36.1.295.)

(15) Truancy

In the last section we saw that a parent, whose child does not attend school as required, may be fined and imprisoned in most states. And the law usually states the minimum amount of the child's absence that will make the parent liable. In Massachusetts every person, who fails to cause a child under his control to attend school for five day sessions or ten half day sessions within any period of six months, is liable to a fine of not more than twenty dollars. An "Attorney General of New York has ruled that more than two unexcused absences in four consecutive weeks constitute a violation of the law" (4.190), for which the parent can be fined and imprisoned.

Concerning the prosecution of parents, Bardeen's School Law says: "A child should not be arrested unless an *habitual* truant or disorderly and insubordinate while in attendance at school. Frequently parents are only too glad to have their children committed as truants and cared for at town or county expense until they are permitted by law to go to work. The most direct and effective method of reaching parents and forcing upon them the duty of keeping their children in school is by penalizing the parent as provided in the statute. Where parents are prosecuted the most, truancy exists the least." (4.191.) Massachusetts and other states provide that "whoever induces or attempts to induce a child to absent himself unlawfully from school, or employs or harbors a child who, while school is in session, is absent unlawfully from school, shall be punished by a fine of not more than fifty dollars."

The law makers of our states passed through childhood before they were called to serve as legislators. Some of them will acknowledge that the truant schoolboy has become the able legislator. Realizing that the majority of truants do not take their parents into their confidence when "playing hookey," the members of our legislatures have also enacted laws relative to habitual truancy. And provision has been made for boarding truant schools, sometimes called "Training Schools," to which *only* habitual truants, habitual absentees and habitual school offenders are committed by our courts. The inmates of our boarding truant schools are usually children that have got beyond the control of their parents or those that come from "broken homes." The child must be discharged from the boarding truant school upon becoming sixteen years of age. Dr. Snedden believes that "much good legislation relating to children breaks down because of poor machinery of enforcement. In Connecticut there is a state agent with assistants who attends to the execution of laws on compulsory education and child labor. In all other states the enforcement of the law is local. In nonurban areas school boards and local constables are authorized to proceed against parents failing to keep children in school; in cities it is now common to constitute special attendance officers with limited police powers. Most of this machinery is yet very defective." (36.1.293.) He maintains that four different types of special class or school are necessary in any city to procure the adequate carrying out of the law. (a) Those pupils who have become quite incorrigible, and whose parents have lost control of them, must be sent to an institutional school, committed for a term of years. Only thoroughgoing reform is adequate. (b) A day truant school, where hours are long and manual work abundant. This school,

while allowing pupils to sleep at home, should aim primarily to keep them off the street and away from contagion of bad company. Such schools do not exist in American, but are found in English cities. (c) Special classes should be provided for pupils who cannot easily be brought under the ordinary school discipline. These classes may have the same programmes as the ordinary classes, but should be under charge of teachers of sufficient maturity, experience, and personal character to cope with this type of child. (d) Possibly a fourth type of class should be for those who by irregular attendance have hopelessly fallen away from the regular class attainments." (36.1.294). Some states by legislation make the parents in part responsible for the support of their children in truant schools.

(16) Medical Inspection of Schools

The legal aspects of medical inspection of schools is treated in Chapter II, "Medical Inspection of Schools" by Gulick and Ayres. (16.159.183.) The statutes cited by Gulick and Ayres were those in operation about the year 1908. At the time "Medical Inspection of Schools" was written, Massachusetts had the distinction of being the only state in the Union having a "mandatory medical inspection law." (16.159.) By a mandatory medical inspection law is meant a law enacted by the state legislature whereby cities and towns are compelled to provide for medical inspection in their schools. Under date of March 7, 1911, Dr. Ayres writes: "Legal provision is made for Medical Inspection in thirteen states and in the District of Columbia. Four are compulsory laws. They are the laws of Colorado, Massachusetts, New Jersey and Indiana. In the last state the law refers to Indianapolis only. Permissive laws exist in California, Connecticut, Maine, New York and the District of Columbia. Permissive laws applying to cities exist in Ohio and Washington. Laws applying to sight and hearing are in force in Louisiana, Vermont and Virgina."

The abstracts of the Medical inspection laws that follow are, in the main, taken from a forthcoming paper on Medical Inspection of Schools," by Mr. George H. Shafer, of Clark University:

Colorado. The responsibility here rests with the teachers, they note defects and inform the principal, who notifies parents. Parents are compelled to have the child examined; if they neglect, they are turned over to the Bureau of Child and Animal Protection for prosecution. If parents are indigent, the child is referred to the county physician.

Massachusetts. The school Committee of every city and town in the commonwealth shall appoint one or more school physicians, shall assign one to each public school within its city or town, and shall provide them with proper facilities for the performance of either duties as prescribed in this act, and shall assign one or more to perform the duty of examining children who apply for health certificates in accordance with this act; provided, however, that in cities wherein the board of health is already maintaining or shall hereafter maintain substantially such medical inspection as this act requires, the board of health shall appoint and assign the school physician. Every school physician shall make a prompt examination and diagnosis of all children referred to him, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require." Teachers make examinations of eyes and ears. The statutes provide First, for a general examination of all the children in the public schools at least once a year for any defect or disability tending to interfere with their school work. Second, for a special examination of children (a) who show signs of being in ill health or of suffering from infectious or contagious diseases (b) who are returning to school after absence on account of illness or from unknown causes, also the examination of pupils who apply for health certificates. The school committee shall notify parents of all defects found.

New Jersey. "Every board of education shall employ a competent physician to be known as the medical inspector and fix his salary and term of office." Every board of education shall adopt rules for the government of the medical inspector which shall be submitted to the State Board of Education for approval."

The medical inspector shall examine every pupil, to learn whether any physical defects exist, and keep a record from year to year of the growth and development of such pupil, which record shall be the property of the Board of Education, and shall be delivered by said medical inspector to his successor in office. Said inspector shall lecture before the teachers at such times as may be designated by the Board of Education, instructing then concerning the methods employed to detect the first signs of communicable disease, and the recognized measures for the promotion of health and the prevention of diseases. The law also compels parents to remedy defects. It went into effect April 13, 1909.

California. The Training School for September, 1910, published at Vineland, New Jersey, has an article on "Health and Development Supervision in California." On pages

248-9 one reads, "Mr. George L. Leslie, director of the medical inspection of the Los Angeles schools, who is chiefly responsible for the passage of the law, summarizes its provisions as follows:

"1. The establishment (under the direction of boards of educaton or boards of school trustees) of annual physical examinations of school pupils and a follow-up service to secure the correction of defective development, thus maintaining continuous health and growth supervision of children and youth. "2. The requirement of physical examination of all candidates for teachers' positions in the public schools to determine vitality and efficiency and make possible further examination of teachers as may be advisable to determine continued fitness for work, and to determine the amount of work to be required of the teaching force of the schools consistent with efficiency and continued service. "3. The adjustment of school activities to health and growth needs and development processes of pupils. "4. The special study of mental retardation and deviation of pupils in the schools. "5. Expert sanitary supervision. "6. It provides for a class of educators—experts in physiology, hygiene, and practical psychology—who can skillfully diagnose defective growth and development, and take more intelligent steps to grow children and youths. It provides for the co-operation of this class of educators and all educators with skilled physicians."

New York provides for the medical inspection of all children in attendance upon schools under their supervision, whenever in their judgment such inspection shall be necessary, and to pay any expense incurred therefor out of funds authorized by the voters of the district or city or which may properly be set aside for such purpose by the common council or the board of estimate and apportionment of a city. (Subd. Added by L. 1910, chap. 602.)

Ohio has a law as follows: Section 7692. Any board of education in a city school district may provide for the medical inspection of pupils attending the public schools. For that purpose it can employ competent physicians, nurses, and provide for and pay all expenses incident thereto from the public school funds, or by agreement with the board of health or other board or officer performing the functions of a board of health for such city. It may provide for medical and sanitary supervision and inspection of the schools which are under the control of such board of education and of the pupils attending such schools, by a competent physician selected by the parent or guardian of the child, but on failure of the parent or guardian, then by the district physicians and other employee to be appointed by such board of health. (R. S. Sec. 4018a.)

The District of Columbia has a permissive law. State of Washington has a permissive law for districts of first class.

In 1907 *Connecticut* passed a law authorizing the board of education or town committee of any town, or the board of education or committee of any school district to appoint one or more school physicians.

The school physician is to examine all pupils referred to him by principals, and teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require." The law further says: "The school authorities of any town or school district which has appointed a school physician in accordance with the provision of this act shall cause every child attending the public schools therein to be separately and carefully tested and examined at least once in every school year to ascertain whether such child is suffering from defective sight or hearing, or from any other physical disability tending to prevent such child from receiving the full benefit of school work, or requiring a modification of such school work in order to prevent injury to the child or to secure the best educational results. Notice of defects of diseases are to be sent to parents with such advice or order relating thereto as the physician may deem advisable." Provision is also made for the employment of *school nurses.*

The law of Maine is largely copied from that of Massachusetts. It differs in that it is permissive in case of the town. And further the following articles make it altogether permissive.

Expenses which a city or town may incur by virtue of the authority herein vested in the school committee shall not exceed the amount appropriated for that purpose in cities by the city council and in towns by a town meeting. (March 16, 1909.)

Further the law of Maine makes no mention of examination for employment certificate.

Utah has a law as follows: Board of Health has jurisdiction in matters pertaining to health in schools. The local boards of health shall have jurisdiction in all matters pertaining to the preservation of the health of those in attendance upon the public and private schools in the state, to which end is hereby made the duty of each of the local boards of health.

1. To exclude from said schools any person, including teachers, suffering with any contagious or infectious disease, whether acute or chronic, or liable to convey such disease to those in attendance.

2. To make regular inspection of all school buildings and premises, etc.

Vermont has a law requiring inspection of eyes and ears by teachers.

It will be noted that a penal provision applying to neglectful parents of defective children is mentioned as occurring in the laws of Colorado and New Jersey. This penal provision is endorsed by many, if not all, of those in sympathy with medical inspection of schools—Also Connecticut authorizes

the employment of school nurses. Relative to the school nurse, Gulick and Ayres say:

"Dr. S. W. Newmayer, of Philadelphia, terms the school nurse 'the most important adjunct to medical inspection'." Dr. John J. Cronin, of New York, in writing of the work of the school nurse says: "It is most highly endorsed by teachers, principals, educators, parents, and children. Since this innovation many cities throughout the world have copied our nursing system as far as possible, up to the standard set by this city." Dr. Ernest J. Lederie, formerly Commissioner of Health of New York City, says, "The school nurse has been voted a success from the day she began work." Dr. Walter S. Cornell says of the school nurses in Philadelphia, "As a rule, in the foreign, poverty stricken sections they are invaluable." Dr. Thomas F. Harrington, Director of the Department of School Hygiene of Boston, writes, "It does not seem possible to conceive a more satisfactory arrangement or a more effective piece of school machinery than the school nurse under school supervision."

"Citations from the best authorities on the subject, similar in tone to those quoted, might be indefinitely multiplied. It may be said, indeed, that there is no division of opinion on the subject. The leading authorities without exception advise and recommend school nurses in connection with the work of medical inspection" (16. 66). Dr. John J. Cronin, Assistant Medical Inspector of the New York City Board of Health, is of the opinion that there should be one medical inspector and one nurse for each two thousand pupils" (16.143). As to Dr. Cronin's right to speak on this question, Gulick and Ayres write, "Dr. John J. Cronin, of New York City, has made most wise, extensive, able and best known medical inspection from the standpoint of education" (16.6). New York pays its nurses $75 per month and employs them for twelve months in the year. Boston pays the supervising nurse $924 for the first year, which is increased by an annual increment of $48 to a maximum of $1,116. The assistant nurses receive $648 per year and an annual increase of $48 until the maximum of $840 is reached. New Haven pays its nurses $600 per year" (16.143-4). A very interesting and instructive "table collected by the bureau of municipal research of New York City, April 1, 1910, and intended to show what school authorities are doing to promote the physical welfare of school children in cities having a population of 8,000 or more," appears in the Report of the U. S. Commissioner of Education for 1910, Vol. 1, pages 141-7. In the same volume at pages 140-1 "Dental Inspection in the Cleveland Public Schools" is mentioned. The final paragraph reads "As a result of the

investigation the board of education accepted a proposition of the Cleveland Dental Society to conduct gratis for the year 1910 the following work: To make one dental examination of all pupils in the public schools within the year; to establish for the year four centrally located clinics for the treatment of the indigent poor; and to conduct a series of practical and illustrated talks on oral hygiene." The Statute Laws on the Practice of Medicine in all states are complied in "Legal Medicine and Toxicology" by R. L. Emerson, M. D., New York, 1909.

(17) Laws for Child Protection

(1) *Societies.* Under this topic, after glancing at the organized movement for the prevention of cruelty to children, some of the laws for child protection will be considered. To any one at all acquainted with the vast amount of legislation on even "the neglected child," no excuse will be required for the omission of much important legislation in a paper of this kind. And as the scope of the topic—Laws for Child protection—is broader than commonly understood from the words: "neglected child," it follows that only the broken and disjointed outlines of the topic can be here sketched.

"The Humane Movement" by Roswell C. McRea, of Columbia University, contains a "Summary of State Laws for the Protection of Children" (31.389-431). Chapter V in the same work (31.135-146) gives much valuable information relative to the organized movement for the prevention of cruelty to children. Societies for the Prevention of Cruelty to Animals were organized in 1866, eight years before similar societies for children were formed.

"In 1874, the officers of the American Society for the Prevention of Cruelty to Animals were confronted with a case of cruelty to a child. This little girl, Mary Ellen, had been daily beaten by a stepmother and tormented in other cruel ways. The attention of charitable people was called to Mary Ellen's plight and they took up her case. It was discovered that the child could have no protection under the law until the guilt of her persecutor was established under existing legal forms. Under these circumstances they turned to the American Society for the Prevention of Cruelty to Animals, which handled the case. The investigation of other children's cases suggested the desirability of an organization that could do for children what was already being done for animals by a number of organizations. Mr. Bergh, Mr. Elbridge T. Gerry and Mr. John D. Wright who were already interested in the work for animals, launched the new venture, and Mr. E. Fellows Jenkins was drawn away from the American Society to become Superintendent of the new organization, a post just resigned by him. The Society was formed to rescue children from vicious and immoral surroundings and to prosecute offenders, to prevent cruel neglect, beating or other abuse of children, to prevent the employment of children for mendicant purposes or in theatrical or acrobatic performances and for the enforcement of all laws for the protection of minors from abuse.

The Society, during all its thirty-five years of work, has consistently avoided all alliances that would bring its activities into co-operation with other organized work for the improvement of the conditions surrounding child life. Meanwhile, the movement thus inaugurated has become world-wide. In the United States, other societies followed the New York society in the following order: 1875—Rochester, 1876—Portsmouth, N. H., 1876—San Francisco, 1877—Philadelphia, 1878—Boston, 1878—Baltimore, 1879—Buffalo, 1879—Washington, Del., 1880—Brooklyn, 1880—Richmond County, N. Y. These all adopted the New York model, as other local societies have since done, principally in the states of New York and New Jersey. The large majority of protective societies, however, combine work for children with that for animals. Indeed, aside from two California societies, two in Virginia, one in Rhode Island, one in Tennessee, one in Michigan and one in Louisiana, those above mentioned in addition to New York and New Jersey societies are the only ones in which the work for children is not combined with that for animals. This of course excludes those instances in which child protection is made a phase of the activities of societies doing general charity work." (31.135-6.)

No less authority than Professor Stimson says, "Perhaps the most dangerous tendency, at least to conservative ideas, is the increasing one to take the children away from the custody of the parents, or even of the mother, and place them in state institutions. Indeed, in some western states it would appear that the general disapproval of the neighbors of the method employed by parents in bringing up, nurturing, educating, or controlling their children, is sufficient cause for the state authorities to step in and disrupt the family by removing the children, even when themselves unwilling, from the home to some state or county institution. Any one who has worked much in public charities and had experience with that woeful creature, the institutionalized child, will realize the menace contained in such legislation" (39.337-8). And Professor Stimson's opinion seems to be indorsed in the attitude of the Pennsylvania Society for the Prevention of Cruelty to Children, according to the following: The Pennsylvania Society is another that has come to share "the modern economic thought that the normal condition of the child is in the home, even though the home be a poor one; the children often help their parents to reform, and the father and mother can in many instances be made to realize and feel that upon them is the burden of responsibility to see that their children do not become in any sense a charge upon the community. Its belief in this theory is evidenced by the fact that in the year just closed 1,522 cases have been passed over to what is technically known as 'Supervision,' cases in which perhaps on the first the breaking up of the family seemed justifiable. Endeavors have, therefore, been made in every case to preserve the family as a whole. The results obtained by visitors and agents in this work of reconstruction have been beyond belief." (31.143.)

A piece of legislation worthy of note is found in the Maryland Code P. G. L. art. 6, sec. 24, as printed on page 9 of the 6th Edition of the Manual of the Maryland Society for the Protection of Children, compiled by Lewis Hochheimer, Esquire. It reads as follows: "2. Sheltering Children—Persons who receive into their homes or employ children who have left their parents, guardians or other custodians on account of actual or supposed illtreatment are protected against vexatious suits by express provision of law. No person who in good faith receives, harbors, persuades away or removes from a parent, guardian or master any minor for the purpose of sheltering or protecting such minor from illtreatment or suffering can be held to incur any liability therefor." (21.9.)

(II) *Offense Against Children forbidden under Penalty.* (a) *General.* According to Mr. McRea's "Summary of State Laws for Child Protection" there are general statutes in some states. It does not follow that, even in the states where no such general statutes exist, the strong arm of the law cannot be invoked for child protection. Mr. McRea found four offenses mentioned in some general statutes namely: "To willfully cause or permit (a) life or health of any child to be endangered, (b) or unnecessarily expose to weather, (c) or cruelly torture or punish, (d) or neglect or deprive of necessary food, clothing and shelter." Kansas (boy under 14 or girl under 16. Search warrant may be issued and child removed.), Michigan (officers may search on issuance of warrant), Utah (boys under 14, girls under 16), and Wyoming seem to be the only states that can be credited with general statutes enumerating the four offenses. Twenty states have no general statutes and the remaining states include all those having from one to three of the four general statutes mentioned.

(b) *Abandonment, Desertion, Non-Support.* Here is included (a) abandonment, (b) or willful failure to provide food, care, shelter, etc., to minor, (c) sentence may be suspended under bond to observe conditions imposed by court, (d) failure to comply with such conditions leads to execution of sentence, Illinois (under 12) Iowa, Maryland, Minnesota (under 15). Nebraska, North Dakota, Ohio, Pennsylvaia (under 16), Texas (under 12) and Wyoming have so legislated. Alabama, Arkansas, Mississippi and Nevada are reported as without laws. Michigan has a law that if the parent is imprisoned, the earnings, if any shall be paid to family (1907 No. 44). In Arizona it is deemed abandonment to send a child to a saloon or house of ill-fame.

(c) *Exhibitions and Employments (not child labor).* To apprentice, exhibit or use any child under——years (a) in any place where intoxicants are sold, (b) as gymnast, acrobat,

dancer, etc., (c) for obscene or immoral purposes, (d) for begging, (e) in any business or exhibition dangerous to life or limb, (f) for peddling, (g) at rag-packing, junk gathering, etc., (h) exception made of church, school, musical or other entertainments for educational or scientific purposes. Wyoming, for children under 14, seems to be the only state that has specific laws on the entire eight subdivisions. Sixteen states are reported as having no legislation. The remaining states include Illinois that has legislation covering seven of the eight divisions of our topic, New York and Ohio with six provisions each.

(d) *Obscene Literature, etc.* (a) To show, publish, give or sell literature, prints, etc., (b) or permit a child to distribute such: Illinois, Minnesota (to show in public to minor), Montana (or criminal news to minor under 16), Nebraska (or criminal news to minor), New Hampshire, New York, and North Dakota (under 18) have enacted laws. Arizona makes it an offense to use indecent language before a minor; Florida penalizes the marking of school places in obscene way by others than pupils; Iowa prohibits the introduction of obscene literature into home, or give to minor, or use phonograph for indecent songs; and Kansas by statute excludes minors from trials where vulgar evidence is produced.

(e) *Admittance to Resorts.* District of Columbia, Kansas, Louisiana, Maryland, Oklahoma, South Carolina, Utah and Virginia are reported as having no laws on the admittance of children to resorts. Twelve states are reported as forbidding their admittance to resorts, unaccompanied by parent or guardian. The following forbid the admittance of children to places where intoxicants are sold: Arizona (under 16), California (under 18), Colorado, Connecticut (unlawful for a minor to loiter about a saloon), Delaware (under 18), Idaho (under 16), Illinois, Indiana (male under 16, female under 17), Iowa, Maine, Michigan, (under 17), Nevada (loiter in), New Hampshire, New Jersey (to play games), New York, North Carolina (under 18 or billiard room, or bowling alley, when adverse notice has been served by parent or guardian), Ohio, Oregon, Pennsylvania (under 18; or any place dangerous to health or morals—1885, Act. of May 28, see 1907, Act of May 29—under 16 in house of prostitution or opium den), South Dakota, Vermont, West Virginia (under 18, or any place dangerous to health or morals) and Wisconsin (or girl under 17 to dance or ball), California makes it an offense to send or direct a minor under 18 to saloon, gambling or immoral place. Colorado forbids admittance to places where obscene plays are performed or where game of chance or for playing for wager is in progress. Massachusetts forbids a child under

14, to be admitted to any resort, after sunset, unaccompanied by adult and under 17, to any dance hall or skating rink unaccompanied by adult, school or church dances excepted. Michigan prohibits the admission of a child under 17 to theatre, dance hall or show place or billiard or ten-pin room; or for a minor to remain in; school pupils included, 1907, No. 55. Minnesota makes it criminal to admit or invite a minor under 18 to a house of ill-fame. In New Jersey the child under 16 cannot be admitted to theatres, dance-halls or show-places and the fines for violations go to the poor fund. It is a crime in the State of Washington to allow a minor to play cards in one's home without consent of parent or guardian, Ball. Code, Sec. 7314.

(f) *Sales of intoxicants to Minors.* Relative to selling liquor to minors, Lewis Sutherland's Statutory Construction reads: "Statutes forbidding the sale of liquor to minors are common, for a treatment of the subject see Black on Intoxicating Liquors, No. 415-422. Some courts hold that an honest and well founded belief that the minor was of lawful age is a good defense to a prosecution under the statute. Other courts hold that such a belief is no defense and that the vendor must ascertain at his peril whether the person to whom he sells is a minor. Where the statute made it unlawful to sell, furnish or give liquor to a minor, a saloon-keeper who allows an adult to treat a minor in his saloon is guilty of furnishing liquor to the minor within the statute. In such a case the saloon-keeper has also been held to deal or traffic in liquor with the minor. But such a transaction is held not to be a sale or gift to the minor. Where a minor expressly buys liquor for an adult, pays for it with the adult's money and delivers it to him, it is not a sale to the minor. Where sales on the written order of the parent, guardian or family physician were expected, it was held that a general order from a parent to sell or give his son from day to day and at all times as much liquor as he wanted was not such an order as the statute contemplated. An act forbidding the sale of liquor to minors provided that a sale by an agent should be deemed and taken to be the act of his master. It was held that a sale by an agent was not conclusive, but only *prima facie* evidence of a sale by the master, and that it would be a good defense that the master had in good faith forbidden such sales. (28.1276-7.) In the following states the sale of intoxicants to minors is forbidden: Alabama (parent has right of action), Arizona (under 16; or to give without consent of parent or guardian), California (under 18), Colorado, Connecticut (and minor is punishable for misrepresentation of age). Delaware (or to procure for), Florida, Georgia (father has right of action

against person who furnishes without his permission. Sale forbidden without permission of parent or guardian), Idaho (or to give), Illinois (to give, without order of parent or physician, or to buy or procure for, without such order), Indiana (and misrepresentation of age punishable, loitering in saloon not to be permitted), Iowa (or to give to, or to procure for, except on order of parent or physician), Kansas (treating or giving by any parent, guardian or physician), Kentucky (without order of parent), Louisiana (or to furnish or to obtain for, or to allow to loiter in saloon), Maine, Massachusetts (whoever sells or gives to a minor either for his own use, the use of parents or of other person, or allows a minor to loiter on premises shall forfeit one hundred dollars for each offense to be recovered by parent or guardian in an action of tort), Minnesota (or pupil except by licensed pharmacist), Mississippi (and minor punishable for false representation of age), Missouri (without permission of parent or guardian), Montana (or gives), Nebraska (or gives), Nevada (and false representation of age punishable), New Hampshire, New Jersey (or give, under 18), New Mexico, New York, North Carolina (to unmarried minor, or to make purchase for), North Dakota (or give, or treat except by order of parent or physician), Ohio (or furnish), Oregon (deliver to, or allow to loiter. Penalty, loss of license. Misrepresentation of age punishable), Pennsylvania (and misrepresentation of age punishable), Rhode Island, South Carolina (or furnish), South Dakota, Tennessee (or to furnish or entice to place where sold), Texas (or to give, without consent of parent or guardian), Utah (or to furnish or procure for), Vermont, Virginia (to sell or procure for pupil in school or college of State), Washington (or give, without consent of parent or guardian, minor between 18 and 21 punishable for misrepresentation of age), West Virginia (unless by prescription, or loitering about saloon), Wisconsin (misrepresentation of age by minor over 18 punishable), and Wyoming. The sale of candy containing liquor or flavor of same is forbidden. Massachusetts (more than 1% of alcohol under 16), Vermont (1906, No. 50) and Wisconsin (1907 Ch. 168).

(g) *Tobacco Laws.* Ten states now have on their statute books laws prohibiting the manufacture and sale of cigarettes and cigarette papers. They are as follows: Tennessee (1897), Wisconsin, Minnesota, South Dakota, Iowa (with $300 mulct provision), Nebraska, Kansas, Arkansas, Oklahoma and Washington. The sale of cigarettes to children is forbidden in the following states: Alabama (or furnish; or materials for such), Arkansas (or tobacco in any form, manufacture and sale of cigarettes forbidden), Arizona (under

16, tobacco in any form; or furnished), Colorado (or gift of tobacco in any form to minors under 16), Connecticut (use of tobacco in public place by minor under 16 forbidden), Delaware (or furnish, or materials for such to minor under 17), Florida (or furnish or procure, or materials for such, for minor under 18), Georgia (or furnish or materials for such), Idaho (or give or materials for such), Illinois (under 16, or tobacco in any form without written order of parent or guardian), Indiana (or furnish, or materials for such, or tobacco in any form to minor under 16, or to advise to use), Iowa (under 16, tobacco in any form. Manufacture and sale of cigarettes forbidden), Kansas (under 21, tobacco, opium or narcotic in any form). Under date of March 18, 1911, Superintendent Lucy Page Gaston of the Anti-cigarette League wrote, "The Kansas law forbids the use of tobacco in any form by minors under 21." Manufacture and sale of cigarettes are forbidden in Kentucky (under 18; or furnish such or materials for such or council to smoke), Louisiana (or material for such), Maine (or give), Maryland (under 15; tobacco in any form without permission of parent or guardian, unless acting as agent of employer). Other persons may not purchase cigarettes for a minor in Massachusetts (under 18; or not being parent or guardian gives to minor under 18; tobacco in any form under 16; or not being parent or guardian gives to minor under 16 shall be punished by a fine of not more than fifty dollars). Michigan (or furnish tobacco in any form to minor under 17, except on order of parent or guardian), Minnesota (furnishing to tobacco or allowing about premises to smoke, manufacture and sale of cigarettes forbidden), Mississippi (or furnish tobacco in any form to minor under 18 without consent of parent), Missouri (or furnish, or materials for such, to minor under 18), Montana (or give tobacco in any form), Nebraska (give or furnish tobacco in any form to minor under 18, manufacture and sale of cigarettes forbidden), Nevada (or give; or cigarette paper. Tobacco in any form to minor under 18, except on order of parent or guardian), New Hampshire (giving tobacco to minor under 18), New Jersey (cigarettes under 18; or furnish, or paper for such, under 14 tobacco in any form), New Mexico (or give; or tobacco in any form, minor under 18, or pupil, without consent of parent or guardian), New York (under 16, minors under 16 not to smoke in public places), North Carolina (minor under 17, or aid in getting, or materials for such), North Dakota (or furnish tobacco in any form), Ohio (or furnish under 16), Oklahoma (manufacture and sale of cigarettes forbidden or gift of cigarettes to any one), Oregon (under 18; or give tobacco in any form without consent of parent or

guardian, and such minor may not smoke in public), Pennsylvania (under 16, tobacco in any form; or furnish cigarettes or paper to any minor), Rhode Island (unlawful for minor under 16 to use tobacco in public), South Carolina (or furnish; or materials for such. Half fine goes to informer), South Dakota (sale or manufacture of cigarettes forbidden. Unlawful for minor to smoke in public, or for any one to abet same), Tennessee (tobacco in any form without consent of parents to minor of 17, manufacture and sale of cigarettes forbidden), Utah (under 18; or furnish tobacco, opium or narcotic in any form), Vermont (under 16, or furnish tobacco without consent of parent or guardian, or furnish cigarettes or wrappers), Virginia (under 16), Washington (and of materials for such forbidden; or furnish tobacco in any form to minor; unlawful for minor to smoke cigarettes or to counsel him to smoke, manufacture and sale of cigarettes forbidden), West Virginia (or opium or furnish), Wisconsin (tobacco in any form, manufacture and sale of cigarettes forbidden), and Wyoming (under 16).

(h) *Carnal Abuse.* The carnal abuse of a female child is a felony punishable under extreme provisions for rape. "In some jurisdictions it is held that a statute punishing for rape any person who shall have carnal knowledge of any woman forcibly and against her will, or any person who shall carnally know or abuse any female under a certain age with her consent, defines but one crime and not two distinct crimes; but in others the statute is construed as defining two distinct crimes" (11.33. 1418). Statutory provisions applying to the carnal abuse of a female child are as follows: Alabama (girl under 12 by male over 16; girl between 12 and 14), Arkansas (girl under 16), Arizona (male over 14 with girl under 17), California (under 16), Colorado (male over 18 with girl under 18. If male is under 20, sentence may be commuted to commitment to State Reform or Industrial School), Connecticut (under 16; any parent or guardian who consents to the detention of a female under 21 for prostitution or carnal intercourse may be fined $1,000 and imprisoned for one year), Delaware (under 18; lascivious playing with girl under 16), District of Columbia (under 16), Florida (under 10; capability of boy under 14 shall be determined by the jury), Georgia (under 12; punishment may be death or on jury's recommendation of mercy twenty years imprisonment), Idaho (under 18, by male over 14), Illinois (under 15, by male over 17), Indiana (under 16), Iowa (under 18; also lewd act of person over 18 with child under 13), Kansas (under 18), Kentucky (under 12; under 16 over 12 lighter penalty), Louisiana (between 12 and 18 by male over 17), Maine (under 14, also between 14 and 16,

lighter penalty), Maryland (under 14; also male over 18 with female between 14 and 16), Massachusetts (under 16), Michigan (under 16; male over 14 with girl 14; also to debauch a male under 15, or take a girl under 17 to house of prostitution), Minnesota (under 16; under age of 10 punished by imprisonment for life; of girl between 10 and 14 imprisonment from 7 to 30 years; of girl between 14 and 16 three months to a year in county jail or one to seven years in state prison), Mississippi (under 12), Missouri (under 14; between 14 and 18), Montana (minor 16 by male over 16), Nebraska (with chaste girl under 18, by male over 18), Nevada (under 14 by male over 15), New Hampshire (to willfully and deceitfully entice or carry away a female child under 18 for purpose of prostitution of illicit intercourse), New Jersey (under 16), New Mexico (under 10; under 14 by male over 14), New York (under 18), North Carolina ("virtuous" female between 10 and 14), North Dakota (under 18, by male over 14), Ohio (under 16 by a male over 18), Okalahoma (under 14 , male over 14, also female between 14 and 16 of previously chaste character), Oregon (under 16 by male over 16), Pennsylvania (under 16, of good repute), Rhode Island (under 16), South Carolina (under 14 and under 16, by male over 14, after abduction), South Dakota (under 18 by male over 14), Tennessee (under 12), Texas (female under 15 by male over 14), Utah (between 13 and 18), Vermont (of girl under sixteen by a male over 16; a male under 16 with a consenting female under 16 are guilty of a misdemeanor and may be committed to the Vermont Industrial School), Virginia (under 14), Washington (under 18), West Virginia (under 14. Does not apply to male under 14 with female over 12 with free consent), Wisconsin (under 18, previously chaste), and Wyoming (under 18).

(i) *Corporal punishment in Schools.* Bardeen's School Law has twenty pages on corporal punishment. After discussing the common law right of the teacher to inflict corporal punishment, Mr. Bardeen says. "A change of sentiment is manifest in recent decisions. The teacher will not find it safe to rely upon modern confirmation by courts of many decisions once rendered and long considered good authority (4.234). Every year this tendency is becoming more and more marked, and the teacher who cannot govern *without* severe corporal punishment will do well to retire from teaching before he is forced out" (4.235). The Laws of 1909 in New York read: "To use or attempt, or offer to use force or violence upon or toward the person of another is not unlawful when committed by any guardian, master or teacher in the exercise of a lawful authority to restrain or correct his child or scholar, and the

force or violence used is reasonable in manner and moderate in degree" (88.1909, N. Y.). "But even here," says Mr. Bardeen, "the teacher is subject to the rules established by the trustees. When the trustees have made a rule forbidding corporal punishment, the teacher may not inflict it" (4.223). New Jersey, and some cities like New York and Syracuse forbid corporal punishment (4.221). "In 1889, Arizona dropped the enactment expressly authorizing corporal punishment" (4.236). Prior to 1899 in Arizona any teacher before inflicting corporal punishment upon a pupil must first notify the parent or guardian and one member of the board of trustees of his or her intention at least one day before such punishment is to be inflicted stating the day and hour at which the punishment will be inflicted and extending an invitation to such parent and one trustee to be present" (4.229). The law just mentioned is not reported to have required engraved invitations with "R. S. V. P." nor the presence of the coroner or a representative of the Associated Press. Cyc., (v. 35, p. 1137) reads, "As a general rule, a school teacher, in so far as it may be reasonably necessary to the maintenance of the discipline and efficiency of the school, and to compel a compliance with reasonable rules and regulations, may inflict reasonable corporal punishment upon a pupil for insubordination, disobedience, or other misconduct, but a teacher cannot inflict corporal punishment to enforce an unreasonable rule, to compel a pupil to pursue a study forbidden by his parent, or to compel him to do something which his parent may have requested that he be excused from doing, although the teacher may be justified in refusing to permit the attendance of the pupil whose parent will not consent that he shall obey the rules of the school. The infliction of corporal punishment by a teacher is largely within his discretion; but he must exercise sound discretion and judgment in determining the necessity for corporal punishment and the reasonableness thereof, under the varying circumstances of each particular case, and must adapt the punishment to the nature of the offense, and to the age and mental condition and personal attributes of the offending pupil, and, considering the circumstances and conditions of the particular offense and pupil, the punishment must not be inflicted with such force or in such a manner as to cause it to be cruel or excessive, or wanton or malicious" (11.35.1137-9). After reading this quotation one is forced to remark that the ever increasing responsibilities of the office have not yet led the public to pay the average teacher as high a wage as the average brick-layer, carpenter and plumber receive. May be it is because the brick-layer, carpenter and plumber first organized unions, and then persistently followed

the injunction: "Ask and you shall receive." What has been said on corporal punishment thus far, applies to cases where the teacher has not been attacked by the pupil. The legal right of self-defense is possessed by every teacher and no legislature will attempt to take it away. Finally as to corporal punishment, Dr. Snedden says, "As in the public schools, there is a general belief that the complete prohibition of whipping would have a bad moral effect; but that by the proper development of other means of control, its use may or ought to be almost entirely dispensed with" (35.147). President G. Stanley Hall and many others subscribe to this belief.

(j) *The Neglected Child.* Judge Baker, of the Boston (Mass.) Juvenile Court in a paper read at Massachusetts Conference of Charities, Fitchburg, October, 1910, said, "Probably the case ordinarily thought of when neglected children are mentioned is that of children who have no regular meals, get only scraps of food and are constantly hungry; who are clad only in dirty, ragged outer garments, without stockings, shoes or under clothes; whose flesh is encrusted with dirt; whose hair is infested with vermin; whose parents are seldom sober, usually idle and frequently in jail. Our statutes, however, authorize interference in a much larger class of cases" (3.3). Judge Baker went on to describe the larger class by giving examples of sober, industrious parents failing to have the child's eyes treated for ophthalmia neonatorum, not providing glasses, surgical attendance or living in unhygienic quarters when able to afford better, as illustrating cases of children who "by reason of the neglect of parents are growing up without proper physical care" mentioned in the Massachusetts statutes. Other cases included the child "excellently fed and clothed and the pink of neatness" but if its parents are selling liquor illegally or letting rooms in their house for immoral purposes, the child can be taken away because in the words of the statute 'by reason of the crime of its parents' it is growing up 'under circumstances exposing it to lead an idle and dissolute life' (3.5). Again, Judge Baker said, "Children may be properly fed, clothed and fairly well cleaned but be suffered by their parents to be frequently tardy and absent from school, and spend all their time when out of school running the streets all over the city because the mother not satisfied with the husband's steady earnings of $18.00 a week, insists on going out to work herself. Such children can be brought to court because 'by reason of neglect of their parents' they are 'growing up without salutary control' " (3.5). These examples from the paper of Judge Baker, with what has been already said on "Laws for Child Protection"

in this study, will give a general idea of the legal problem known as the "neglected child." In the introduction to "Juvenile Court Laws in the United States," Expert Special Agent John Koren, of the United States Bureau of the Census, wrote: "In addition to hearing cases of delinquency these courts (Juvenile Courts) are charged with the disposition of dependent and neglected children. In many instances the laws prescribing the authority and duty are so bound up together that they cannot very well be separated. Moreover, the functions of the juvenile courts and their peculiar place in the community cannot be correctly estimated if viewed solely in relation to delinquency cases. It therefore seemed wisest to incorporate in the summary the legislation relating to dependent and neglected children, so far as the juvenile courts are concerned with them." (18.3.) The various efforts in several states, and especially in large cities, to care for neglected children are summarized by Mr. Homer Folks in his monograph on the Care of Destitute, Neglected and Delinquent Children. (New York, 1902.)

(18) Juvenile Court Laws

Juvenile Court Laws "have in recent years come in for the larger share of attention in all of our state legislation. Radical changes, with a view to recognizing the independence of the child and the desirability of treating it both apart from the usual rules of procedure and punishment applicable to adult criminals and also with a view to holding the parent or guardian responsible for the wrong doing of the child as well as to secure better environmental conditions by removing it entirely from the custody of the parent, have found a place in the law of most states." (32.1.624.) "Juvenile Court Laws in the United States—A Summary by States, by Thomas J. Homer; A topical abstract by Grace Abbott; Edited by Dr. Hart, of the Russell Sage Foundation, appeared in 1910, and should be consulted by every one interested in the subject. It is a book of 150 pages, and its comprehensiveness and compressibleness become evident the more it is tested and examined. This section in touching on only some of the salient points can at the most only serve as an indicator pointing to "Juvenile Court Laws in the United States Summarized" (18). Twenty-three states have enacted juvenile court laws, and they are Alabama, California, Colorado, Georgia, Idaho, Illinois (1899), Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, Wisconsin—and in the

District of Columbia. "Under the common law a child of seven was regarded as responsible for his acts and was treated as a criminal in the charge, the trial, and the disposition made of him after the trial. Under the new theory the child offender is regarded not as a *criminal* but as a delinquent, 'as misdirected and misguided and needing aid, encouragement, help and assistance;' he is kept entirely separate from the adult offender, and the probation system is used whenever practicable. These are the most important features of the new legislation which has been adopted in the states enumerated" (18.122). District of Columbia, Colorado, Indiana, Louisiana, Massachusetts, Michigan, Maryland, Missouri and Utah have created special courts which are given jurisdiction over juvenile offenders alone. "Most states have found, however, that it presented fewer legal difficulties to use some court already established in this jurisdiction." (18.123). "In the great majority of states the jurisdiction of the Juvenile Court extends to children 16 or 17 years of age. But in Illinois and Kentucky the limitation is for boys 17 and girls 18, in Louisiana, Nebraska and Oregon 18 for both, and in Utah 19 for both boys and girls" (18.125). The more inclusive laws of Alabama, Colorado, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Ohio, Tennessee, Texas, Utah and Washington regard "as a delinquent any child who (a) knowingly associates with thieves, vicious or immoral persons, (b) absents itself from home without the consent of its parent or guardian or without just cause, (c) is growing up in idleness or crime, (d) knowingly visits or enters a house of ill repute, (e) visits or patronizes gambling houses, saloons, or bucketshops, (f) wanders about the street at night or about railroad yards or tracks, (g) jumps on and off trains, (h) enters a car or engine without lawful authority, (i) uses vile, obscene or indecent language or is (j) immoral or indecent" (18.126-7).

The subdivisions of delinquency conceive the child as actively at fault, while the laws covering the neglected child and the dependent child look upon them as more passive or the victims of the faults of others. And it is to be remembered that juvenile courts are concerned not only with the delinquent but also with the neglected and dependent child. The procedure in juvenile courts may be "initiated" on a petition in California, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Oregon, Tennessee and Wisconsin. In Alabama, Colorado, Massachusetts, Missouri, Texas, Utah and Washington, the old word "complaint" is used. (18.127.) A "summons" issues on the filing of the "petition" or "complaint"

in many states. This "summons" is addressed to the parent or guardian and directs him to appear with the child in court on a certain date. The laws in force in Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, New Hampshire, New Jersey, Ohio, Oregon, Washington and Utah make "the trial quite informal so that an intimate friendly relationship may be established at once between the judge and the child." New Jersey and New York follow the regular criminal procedure as does also Michigan when the child is charged with a felony" (18.129). The District of Columbia and eight states reserve the right of appeal from the decision of juvenile judges. Twenty-one states require a separate Juvenile Record. A dozen states require the juvenile court to be held in a separate room and Chicago and Milwaukee have separate Juvenile Court Buildings. (18.131.) Six states "provide that the trial shall not be public and all persons not necessary to it shall be excluded." (18.132.) Pending trial no child under twelve shall be committed to jail in Illinois, Michigan and California, under fourteen in Colorado, Idaho, Kentucky, Massachusetts (except when arrested in the act of violating a law of the commonwealth or on a warrant; if over 14 may be comitted to jail if court thinks he will not otherwise appear for trial, Montana, Nebraska, Ohio, Tennessee, Washington and Wisconsin, under sixteen or seventeen in Kansas, New Hampshire, Texas and Utah (18.133.) Fifteen states have a detention "home" or "school" instead of a jail for juveniles awaiting trial. The juvenile Judge in "most states can continue the hearing from time to time, leaving the child, under the supervision of the probation officer, in its home or in some suitable family or commit it to some detention school or House of Reform or to any institution willing to receive it and having for its object the care of delinquent children" (18.134.) Connecticut, District of Columbia, Indiana and Massachusetts provide that the court may fine or imprison the child for the original offense (seldom done in Massachusetts) or for violating the conditions of probation—Illinois, Massachusetts (if child is over 14), Ohio, Oregon and Texas leave a loophole for a return to the old system by providing that the judge may order the child to be proceeded against and sentenced under the existing criminal laws of the state (18.135.) Illinois, Missouri and Wisconsin select the probation officers for their juvenile courts from eligible lists determined by competition civil service examination. In most of the states the juvenile Judge has the appointment of the Juvenile Probation officer (18.136). "The duties of the probation officers, the law provides in almost all the states having Juvenile Court Laws, shall be (a) to investigate any

child to be brought before the Court, (b) to be present in court to represent the interests of the child, (c) to furnish such information as the judge may require and (d) to take charge of any child before and after trial." (18.137.) The following states have statutes punishing by fine or imprisonment parents or others who contribute to the child's delinquency: Colorado ($1,000 fine or 12 months imprisonment or both), Connecticut ($500 fine or 6 months imprisonment or both), District of Columbia ($200 fine or 3 months or both), Idaho ($500 or 6 months or both), Illinois $200 or 12 months or both), Indiana ($500 or 6 months or both), Kansas ($1,000 or one year or both), Kentucky, Massachusetts ($50 or 6 months or both), Minnesota ($500 or 6 months or both), Missouri, Nebraska ($500 or six months or both), New Jersey ($1,000 or 12 months or both), Louisiana, New York, Ohio ($1,000 or 12 months or both), Texas ($1,000 or 12 months or both), Utah, Washington ($1,000 or 12 months or both) and Wisconsin ($500 or one year or both) (21.138-9). In the following states, with the exceptions noted, a child "in no case may be sent to a common jail but to a special place of detention:" Alabama (may be so placed if captured for a felony, in nighttime, or in exceptional cases for safe-keeping until home can be found), Arizona (but no child under 12 may be committed to the Industrial School unless this seems best after probation), California (under 12. Others must be kept separate from adults), Colorado (under 14), Georgia (under 16), Idaho (under 14), Illinois (under 12,) Indiana (boys under 16, girls under 17), Iowa (under 17), Kansas (except in case of felony), Kentucky (children at jails must be looked after by matron. Dependent and neglected must be kept apart from delinquent, boys under 17, girls under 18), Louisiana (neglected and delinquent under 17), Maryland (under 16), Massachusetts (lock-up or house of detention to be avoided, whenever possible—under 14, except for offense ordinarily punished by death or life imprisonment), Michigan (under 12 or with adults if under 17), Minnesota (under 14; between 14 and 16, to be separate from adults), Montana (under 14), Nebraska (under 14; between 14 and 16 not with adults), New Hampshire (under 17), New York (under 16 no longer than necessary for the purpose of transfer. Not with adults except in presence of proper officials), Ohio (under 12); Oregon (under 14 and others must be kept apart from adults), Pennsylvania (under 12, not to be sent to any correctional institution pending hearing, not to be confined in institution for adults), Rhode Island (under 16, older ones at discretion of court. State probation officer may have custody of girl under 16, not longer than six months), South Dakota (under 16), Tennessee (under 14,

and not to be incarcerated except to guarantee appearance in court), Utah (boys under 14, girls under 16), Vermont (under 16, not to be sent to the house of correction for first offense, but to state industrial school), Washington (under 14, and none shall be placed with adults) and Wisconsin (under 14; and between 14 and 16, not with adults) (18.395-431). Finally it should be stated that a child in most states becomes an adult, before the criminal law, earlier than he does before the civil law, that the juvenile age fixed by the legislation of the states does not correspond to the age of majority; that when the juvenile age is passed the child is subject to treatment as an adult, although many states are not unmindful of the possibility of reformation taking place even in manhood.

(19) Child Labor Laws

A summary of the child labor laws in force in 1910 has been prepared by Laura Scott, and will be found in "Legislative Review, No. 5, American Association of Labor" (34).

All states and territories except Nevada have enacted laws on child labor. The following have laws prohibiting any child labor whatever: Arizona (under 14 during school hours without proof that child is excused from school attendance), Arkansas (under 14 without age and dependency certificate or schooling certificates), Colorado (under 14 during school term without school certificate; 14 to 16 who cannot read and write, without schooling certificate), Connecticut (under 14 when school is in session; 14 to 16 who cannot read must attend night school), Delaware (under 14 in any gainful occupation), Florida (under 12 when school is in session), Idaho (in any gainful occupation under 12; 12 to 14 during school session; 14 to 16 without required school instructions), Illinois (under 14; 14 to 16 who cannot read and write, without age certificate; 14 to 16 who cannot read and write, without age certificate and night school certificate if there is a night school held in such place), Kansas (under 14 when school is in session), Kentucky (under 14 during school hours; 14 to 16 without employment certificate), Maryland (under 12; 12 to 16 without permit), Massachusetts (under 14 while school is in session), Minnesota (under 14 when school is in session; 14 to 16 without employment permit and medical certificate if demanded), Missouri (under 14, 14 to 16 without age certificate), Montana (during school term under 16 without schooling certificate), Nebraska (during school hours under 14), New York (during school term under 14; 14 to 16 in cities of first and second class without employment certificate or school certificate), North Dakota (under 14 during the term of public school), Oregon (under 14 during school hours), Washington (under 15 without schooling certificate) and Wisconsin (under 14; 14 to 16 without permit). Night labor for children under twelve is prohibited from 8 P. M. to 6 A. M. in South Carolina in factories: mines and textile establishments—under *fourteen* in Arkansas (7 P. M. to 6 A. M. in factory manufacturing), Georgia (7 P. M. to 6 A. M. in factory, manufacturing), North Carolina (7 P. M. to 6 A. M. in any), Texas (6 A. M. to 6 A. M. in any), Virginia (6 P. M. to 7 A. M., manufacturing, mechanical mining), under *sixteen* in Alabama (from 7 P. M. to 6 A. M. in factories and mills), California (10 P. M. to 6 A. M. in hotels, laundries, manufacturing, mercantile, messenger, office, place of amusement, restaurants and workshops),

Connecticut (after 10 P. M. in mercantile), Delaware (6 P.M. to 7 A. M. in any gainful occupation), District of Columbia (10 P. M. to 6 A. M.), Idaho (9 P. M. to 6 A. M. in any occupation), Illinois (7 P. M. to 7 A. M. in any gainful), Iowa (9 P. M. to 6 A. M. in elevator, factory, laundry, manufacturing, mercantile, mill, mine, packing house, shop, slaughter house, store), Kansas (6 P. M. to 7 A. M. —distribution of messages or merchandise, elevator, factory, messengers, mine, packinghouse, theatre, workshop), Kentucky (7 P. M. to 7 A. M. in any gainful occupation), Louisiana (male under 16, female under 18—7 P. M. to 7 A. M. in any work), Michigan (male under 16, female under 18—6 P.M. to 6 A.M. in manufacturing, messengers [except for telephone, telegraph or post office], mine, workshop), Minnesota (7 P. M. to 7 A. M. in any gainful occupation), Mississippi (7 P. M. to 6 A. M. in manufacturing), New York (5 P. M. to 8 A. M. in factory; under 16—10 P. M. to 7 P. M.—under 16 after 7 P. M.; cities of first class—in apartment house, business office, distribution of messages or merchandise, hotel, mercantile establishment, messenger, restaurant, telegraph office, transmission of messages or merchandise), North Dakota (7 P.M. to 7 A. M. any), Ohio (male under 16, female under 18—6 P. M. to 7 A. M.), Oklahoma (male under 16, female under 18—6 P. M. to 7 A. M.), Oregon (6 P. M. to 7 A. M. in any), Pennsylvania (9 P. M. to 6 A. M.), Rhode Island (8 P.M. to 6 A. M. in business establishment, factory, manufacturing, except mercantile establishments on Saturday and four days preceding Christmas), Vermont (after 8 P. M. in factory, messenger, mill, quarry, railroad, workshop), Washington (8 P. M. to 5 A. M.) and Wisconsin (9 P. M. to 6 A. M. in any); under *eighteen* in New Jersey (7 P.M. to 7 A.M. in factory, manufacture of goods of any kind, mill, workshop), New York (male 16 to 18 from 12 midnight to 4 A. M., and female 16 to 21 from 9 P. M. in factories); under *twenty-one* in Massachusetts (between 10 P. M. and 6 A. M. in mercantile, and manufacturing.

Florida, Missouri, Montana, Nebraska, Nevada, New Mexico, South Carolina, Texas, Utah, Vermont, Washington, West Virginia and Wyoming have no legislation on the number of hours that a child shall work per day or per week. Legislation in the other states as to the maximum hours of child labor is as follows: Alabama (under 14, 60 hours per week), Arkansas (under 14, 60 hours per week 10 per day), California (under 18, 54 per week 9 per day) Colorado (under 16, 8 per day), Connecticut (under 16, 58 per week), Delaware (under 16, 54 per week 9 per day), District of Columbia (under 16, 48 per week), Idaho (under 16, 54 per week 9 per day), Illinois (under 16, 48 per week 8 per day), Indiana (male under 16 female under 18, 60 per week 10 per day, under 14, 8 per day), Iowa (under 16 10 per day), Kansas (under 16, 48 per week 8 per day), Kentucky (under 16, 60 per week 10 per day), Louisiana (under 18, 60 per week 10 per day), Maine (male under 16, female under 18, 58 per week 10 per day), Maryland (under 16, 10 per day), Massachusetts (under 18 in mercantile 58 per week; under 18 in manufacturing 56 per week 10 per day, under 18 in any other employment for wages or other compensation 58 per week with average for year 56 per week), Michigan (under 18, 54 per week 10 per day) Minnesota (under 16, 60 per week 10 per day), Mississippi (under 16, 58 per week 10 per day), New Hampshire (under 18, 58 per week 9 hours 40 min. per day), New Jersey (under 16, 55 per week 10 per day), New York (under 16 in factory 6 days per week 8 hours per day; under 16 in other occupations 54 per week, 9 per day; male 16 to 18, female under 21, 60 per week 10 per day), North Carolina (under 18, 66 per week), North Dakota (under 16, 60 per week, 8 per day), Ohio (male under 16, female under 18, 48 per week 8 per day), Oklahoma (under 16, 48 per week 8 per day), Oregon (under 16, 6 days per week 10 hours per day), Pennsylvania (males under 16, females under 18, 58 per week 10 per day), Rhode Island (under 16, 56 per week 10 per day), South Dakota (under 18 10 per day), Tennessee (under 16, 60 per week) and Wisconsin (under 18,

in cigar factory 48 per week 8 per day; under 18 in any other, 6 days per week 10 hours per day).

To enumerate the many occupations prohibited to children in the various states would take too much space. The prohibited occupations to children of certain ages generally include the dangerous, injurious, unhealthy, acrobatic, mendicant, immoral, hazardous, standing, manufacturing, mercantile, mechanical, workshop, and many states have a general prohibition for any gainful employment (34.132). "The laws as to labor in mines are naturally more severe; although in some they are covered by ordinary factory laws (Colorado, Florida, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, and Wisconsin). Female labor is absolutely forbidden in mines or works under ground in Alabama, Arkansas, Illinois, Indiana, Missouri, New York, North Carolina, Oklahoma, Pennsylvania, Utah, Washington, Wyoming and West Virginia—in short, in most of the states except Idaho, Kansas, Iowa, Kentucky, Virginia, Wyoming, where mines exist; and the limit of male labor is usually put at fourteen (Alabama, Arkansas, Idaho, Indiana, Missouri, Ohio (fifteen during school year), South Dakota, Tennessee, Utah and Wyoming), to sixteen (Illinois, Missouri (of those who can read and write), Montana, New York, Oklahoma, Pennsylvania and Washington); or twelve (North Carolina, South Carolina and West Virginia), even in states which have no such legislation as to factories. The laws as to elevators (Indiana, Massachusetts, New York, Rhode Island, Kansas and Oregon), dangerous machinery (Connecticut, Iowa, Missouri, Oregon, Louisiana and New York), or dangerous employment generally (Illinois, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New York), Ohio, Oklahoma, Pennsylvania, and Wisconsin), are even stricter, and as a rule apply to children of both sexes; the Massachusetts standard being, in the management of rapid elevators, the age of eighteen, in cleaning machinery in motion, fourteen, etc.; sixteen to eighteen in Indiana, Iowa, Louisiana, New Jersey, New York and South Carolina. The labor of all women in some states, and of girls or women under sixteen or eighteen in other states, is forbidden in occupations which require continual standing Illinois (under sixteen), Michigan (all), Minnesota (sixteen), Missouri (all), New York (sixteen), Ohio (all), Oklahoma (sixteen), Wisconsin, sixteen), Colorado (all over sixteen). Females in Iowa, Louisiana, Michigan, Missouri, New Hampshire, New York, Vermont, Washington (except wife of the proprietor or a member of the family), or minors in Arizona, Connecticut, Georgia, Pennsylvania, Idaho, Maryland, Michigan, Missouri, New Hampshire, South Dakota and Vermont, or young children in Florida, Illinois, Massachusetts, Missouri and Nebraska, are very generally forbidden from working or waiting in bar-rooms or restaurants where liquor is sold, and in a few states girls are prohibited from selling newspapers or acting as messengers (New York, Oklahoma and Wisconsin). The Northern States have a usual age limit for the employment of children in ordinary theatrical performances, and an absolute prohibition of such employment or of acrobatic, immoral, or mendicant employment. But in some states it appears that there is only an age limit as to these (California, Kentucky, Maine, Maryland, Michigan, Missouri, Montana, New York, Oregon, Rhode Island, (sixteen years); Colorado, District of Columbia, Florida, Illinois, Kansas, New Hampshire, Virginia, Wisconsin, Wyoming (fourteen); Connecticut, Georgia (twelve); Delaware, Indiana, Louisiana, Massachusetts, West Virginia (fifteen); Minnesota, New Jersey, Pennsylvania, Washington (eighteen). The hours for railroad and telegraph operators are limited in several states, but rather for the purpose of protecting the public safety than the employees themselves (Colorado and New York). The following other trades are prohibited to women or girls: Bootblacking or street trades generally (District of Columbia and

Wisconsin); work upon emery wheels, or wheels of any description in factories (Michigan); and in New York no female is allowed to operate or use abrasives, buffing wheels, or many other processes of polishing the baser metals, or iridium. Selling magazines or newspapers in any public place, as to girls under sixteen (New York, Oklahoma, Wisconsin), public messenger service for telegraph and telephone companies as to girls under nineteen (Washington)" (39.225,-6).

(20) Rights of the Child

"Legislation always means an attempt to define and express rights which society is ready to recognize, guarantee, and make universal in their application. Among the more important rights of childhood that are now generally given legislative protection are: (1) The right to be well born. (2) The right to parental name, support and protection. (3) The right to leisure, play, and recreation. (4) The right to education. (5) The right to exemption from work, until physically and mentally equipped for the specific tasks with which the work life may properly begin, and, for a longer period the right to protection from any temptation to enter upon extra-hazardous or dangerous trades or to work under conditions inimical to health and morals. (6) The right to protection from inhumane treatment. (7) The right to protection of health and morals. (8) The right to a chance in a decent environment, both physical and social, when guilty of any infraction of the law" (36.621). Most of these rights have been discussed in the preceding pages. There are many other privileges and disabilities that the law confers. In Oliver vs. Houdlet, 13 Mass., 237, Justice Wilde said, "In all cases the benefit of the infant is the great point to be regarded; the object of the law being to protect his imbecility and indiscretion from injury, through his own imprudence or by the craft of others." "Hence, although the infant may avoid his contract, yet it is binding on a person of full age who contracts with him. Every person deals with an infant at arm's length, at his own risk, and with a party for whom the law has a jealous watchfulness" (46.10). Some contracts bind the infant, or minor as we shall call him henceforth. A minor's contract to marry, his contract for necessaries for himself or his wife and children, and his contract to enlist seem to be binding. The prices he will have to pay for necessaries, will not be what the merchant charges but what the necessaries are reasonably worth. "Of course food, clothing and house rent, especially if the minor is a young man who is married, are necessaries. Dentist's bills for filling teeth, and even a watch and chain, have been judicially held to be necessaries for certain well-to-do lads, who, after running up these bills, refused to pay them. More unhandsome still was the con-

duct of the youthful Kentucky bridegroom who tried to elude payment for his wedding suit of clothes, on the ground that it was a luxury and not a necessity. But he, and the young Englishman who bought a wedding present for his bride and then tried to escape paying for it, found that the jury considered these things necessaries and not luxuries. On the other hand, cigars and tobacco, wine suppers, and diamond and ruby cuff-buttons worth $60 apiece, are held in law to be luxuries, and in no possible way necessaries for any minor; not even for fashionable young men in college who wish to lead their 'set'" (15.84-5). The safest rule in business transactions seems to be for the adult to deal with the minor's parent or guardian. Of course a minor can take and hold property of all kinds during minority but the vendor or grantor is usually liable to have the minor refuse to confirm the sale or conveyance on attaining full age. There are so many conflicting decisions on this whole subject that "the layman, who is his own lawyer usually has a fool for a client." What has been said on this topic applies to the minor, who has property in his own name and who is not living at home. Ordinarily, if the minor has property of his own and his father is not so fortunately circumstanced, the minor's support can be made a charge on the minor's property. But this whole subject has been so diversely regulated by statute that it seems impossible to frame a short rule that will be found universal. The husband or father who fails to provide reasonable support and maintenance for his wife and minor children can be punished by a fine (in Massachusetts and other states payable to the wife) or imprisonment.

The child adopted is usually not related by nature to those assuming the legal relations of maternity or paternity, and "the consent of the child or other person to be adopted must in most states be obtained if such person be over fourteen years of age or over twelve years in the states of New York, California, Nevada, the Dakotas, Idaho and Arizona. Generally any woman being an inhabitant of the state and twenty-one years of age may adopt. The adopter must be forty years of age in Louisiana; competent to make a will in Iowa. If the adopter has a wife or husband, he or she must consent or join in the petition or other instrument, if competent, in the states of New Hampshire, Massachusetts, Maine, Vermont, Rhode Island, Connecticut, New York, New Jersey, Ohio, Illinois Michigan, Wisconsin, Minnesota, Delaware, Kentucky, Missouri, California, Oregon, Nevada, Colorado, Washington, the Dakotas, Idaho, Utah and Louisiana. In Massachusetts and Louisiana the person adopted must be younger than the person adopting; and it must be a child in the States of New Hamp-

shire, Maine, Rhode Island, Pennsylvania, Illinois, Wisconsin, Minnesota, Nebraska, Delaware, Missouri, Oregon, Nevada, Colorado, Utah, Alabama, Florida, Louisiana, and the Territory of New Mexico. No woman can adopt her own husband in Massachusetts; or her own child in Illinois, Wisconsin, Iowa, Minnesota and Washington; a brother or sister, whether of the whole or half blood, or an uncle or aunt in Massachusetts; nor in Louisiana can a man adopt his illegitimate children, whom the law prohibits him from acknowledging. By the law of the state of Nevada no mongolian can either adopt or be adopted. It would seem by the law of Illinois that only an orphan can be adopted, or a child both of whose parents have deserted it for at least one year. In New Jersey, Idaho, and Louisiana the person adopting must be at least fifteen years older than the person adopted, and at least ten years older in California, Nevada, and the Dakotas. In North Carolina an adoption may be made either for life or during the minority of the child (5.50-2).

A digest of the apprentice laws of the states will be found in "The apprenticeship System in its relation to Industrial Education" by the late Carroll D. Wright, President of Clark College, Worcester, Massachusetts, United States Bureau of Education, Bulletin, 1908, No. 6. (47.) "Besides the general power of a parent to bind his infant child as an apprentice, an orphan whose estate is insufficient for his support, or an infant pauper, whether an orphan or not, may be apprenticed by the overseers of the poor or other similar officers" (11.3.542). In some jurisdictions, as in New York, an infant may bind himself, while in others this power is denied. The usual rule is to require the child's consent to his apprenticeship.

In the United States the child's capacity to make a will is looked upon with disfavor according to the following: "Modern legislation repudiates largely the wills of all infants, male or female, with obvious disfavor. And the latest enactments of the majority of American states are to the same purport, establishing the age of twenty-one as that at which a person of either sex ceases to be disqualified from making a will of either real or personal estate. States still vary in provisions, however, concerning the testamentary capacity of infants. Eighteen years is sometimes taken as the testamentary age for both males and females; while various codes adopt a still earlier standard of discretion, distinguishing in some instances between males and females, or even between females married and unmarried. Sometimes, too, the line is drawn between the kinds of property, so that an infant's personality but not his real estate may be disposed by testament before he reaches the age of twenty-one" (33.21).

The code of Georgia, Seventh Title, Chap. 2, Art. 1, 3265 reads "Infants under fourteen years of age are considered wanting in that discretion necessary to make a will." In New York, a female at 16 and a male at 18 can dispose of their personal property by will.

(21) Rights of Parents

The parents have the natural right to the control and custody of the child. The common-law rule was that the father's right to custody of a legitimate child was superior to that of the mother. But the common-law rule has been modified in most, if not all, states. "General rules cannot be laid down for the determination of cases affecting the custody of infants, there can be no legal standard by which the courts must be governed. The general result of American cases may be characterized as an utter repudiation of the notion that there can be such a thing as a proprietary right or interest in or to the custody of an infant. The terms "right" and "claim," when used in this connection, according to their proper meaning, virtually import the right or claim of the *child* to be in that custody or charge which will subserve *its* real interest" (20.22). Colorado, Connecticut, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin allow a married woman to be appointed guardian of her own or other people's children, to have charge of their persons and property, even though she lives with her husband. In Arkansas, Missouri and Utah, she can be appointed guardian of a child's person only and in California of its estate. In New Jersey she and her husband may be jointly appointed (15.91). Statutes in every state provide for the support of the child by the parent, and when the child is an orphan, statutory provision exists in some states for his support by the grandparents, if they have sufficient means. The marriage of a minor daughter excuses her father from supporting her as that is one of the duties assumed by her husband. In all cases where a child has property, the parent before using the property, even for the child's benefit, should apply for permission to the proper court. If the parents have custody of the child, the child's earnings belong to the parents. "Under some statutes the parent, if he intends to claim the child's earnings, must notify the child's employer, and in absence of such notice payment to the child is valid and he has good title to the money" (11.29.1624). The parent may emancipate the child by "giving him his time," and "the effect of this is to throw the child upon his

own exertions for support and legally absolve the father from further obligation" (15.76).

Religious Convictions. The peculiar religious convictions of a father form no ground for removing the child from his custody, nor does a father forfeit his right to custody of his child by being or becoming an atheist. But where a father belongs to a sect which entertains opinions, obnoxious to society, adverse to civilization, opposed to the usage of christendom, and in some respects contrary to the express commands of the Bible, the court will not award him the custody of the child. In determining the custody of a child as between persons other than parents the court regards its temporal welfare as paramount to questions of religious doctrine; but the child will be delivered to the custody of persons of its father's faith if its temporal interest will be as well conserved by the custody of such persons as by that of others of a different faith or indifferent in religious matters" (11.29.1600).

(22) Majority

At common law all persons under twenty-one are infants or minors but this rule has been modified in some states by statute. The age of majority in some states is eighteen years for married females while in other states eighteen is the age of majority for all females, and in Utah all minors attain majority on marriage. Provisions in some states are made whereby a minor can be relieved of legal non-age by the court. The statutory provisions as to majority follow: Alabama (21, except married females; over 18 may be relieved of non-age by the court), Alaska (21 except "all female persons when married according to law"), Arkansas (males 21, females 18), Arizona (males 21, females 18), California (males 21, females 18), Colorado (males 21, females 18), Connecticut (21 for all persons), Delaware (21 for both sexes), District of Columbia (males 21, females 18), Florida (21 non-age may be removed by court over 18), Georgia (males and females 21), Idaho (male 21, female 18), Illinois (male, 21 female 18), Indiana (21), Iowa (male 21, female 18, and also attains majority by marriage), Kansas (21 male, and female 18), Kentucky (21,) Louisiana (21), Maine (21), Maryland (males 21, females for most purposes 18), Massachusetts (21), Michigan (21), Minnesota (males 21, females 18), Mississippi (21), Missouri (male 21, female 18), Montana (males 21, females 18), Nebraska (males 21, females 18), marriage ends minority of female), Nevada (male 21, female 18), New Hampshire (both sexes come of age at 21), New Jersey (21), New Mexico (21, guardianship over both ceases on marriage), New York (21),

North Carolina (21), North Dakota (males 21, females 18), Ohio (male 21, females 18), Oklahoma (males 21, females 18), Oregon (males 21, females 18), Pennsylvania (21), Rhode Island (21), South Carolina (21), South Dakota (males 21, females 18), Tennessee (21), Texas (21, females 18 also becomes of age on marriage), Utah (males 21, females 18, all minors attain their majority on marriage), Vermont (male 21, female 18), Virginia (21 for both or when female marries), Washington (males 21, females 18), West Virginia all persons (21), Wisconsin (males 21, married women over 18), Wyoming (males 21, females 18 or until they marry).

(23) Summary

1. Federal legislation seems to be chiefly concerned with the alien child. Professor Stimson intimates that the Constitution may have to be amended to make Federal legislation possible (39.215).

2. Each state legislates for the children within its jurisdiction, and there is a wide diversity in the child-laws of the states.

3. It seems to be legally settled "that the legislature must be the sole judge of the expediency of such legislation" (39.215); and "the state is the ultimate parent of the child."

4. Parents and children have been deprived of their natural rights through the legislation of some states. "Indeed, in some Western states it would appear that the general disapproval of the neighbors of the method employed by parents in bringing up, nurturing, educating or controlling their children, is sufficient cause, for the state authorities to step in and disrupt the family by removing the children, even when themselves unwilling, from the home to some state or county institution. Any one who has worked much in public charities and had experience with that woeful creature, the institutionalized child, will realize the menace in such legislation" (39.337-8).

5. The laws on marriage and divorce are not uniform throughout the states.

6. No state has laws regulating the employment of pregnant mothers.

7. Nine states have no laws on the practice of midwifery.

8. Sixteen states have laws requiring cases of ophthalmia neonatorum to be reported. In Connecticut midwives and nurses are liable to a fine of $200 or imprisonment not to exceed six months or both for failure to report in writing within six hours to health officers the fact that one or both eyes of a child has become inflamed, swollen or reddened at anytime within two weeks after birth.

9. The Pennsylvania law relative to vital statistics has been adopted by twenty states and should become universal in this country.

10. The legal status of the illegitimate child closely approximates that of the legitimate child in some states.

11. The New Jersey law on "certified milk" is most comprehensive. (State of New Jersey, Laws of 1909.)

12. Seven states have no compulsory education law. "Throughout almost the entire United States some school attendance is compulsory from 7 or 8 years of age to 14" (36.1.293). Thirty-five states impose penalties on parents for neglect to comply with the compulsory education law.

13. Some states have certain laws, as for example school laws, that minimize the functions of the home, but also emphasize parental responsibility through penalizing provisions.

14. There is a tendency to coddle the child in some states and the absolute prohibition of corporal punishment in schools seems to be illustrative of the tendency.

15. Thirteen states have legal provisions on medical inspection of schools. Four are compulsory laws. They are the laws of Colorado, Massachusetts, New Jersey and Indiana (refers to Indianapolis only). The New Jersey law compels parents to remedy defects. Connecticut provides for the employment of school nurses.

16. The District of Columbia and seven states seem to have no laws on abandoment, desertion and non-support. Michigan has a law that provides if the parent is imprisoned, his earnings if any shall be paid to the family.

17. Sixteen states seem to have no laws regulating exhibitions and employments (not child-labor) of children.

18. Three states seem to have no laws on the publication or sale of obscene literature to children.

19. The District of Columbia and seven states are reported as having no laws governing the admittance of children to resorts.

20. The sale of intoxicants to children is prohibited generally throughout the country.

21. Ten states prohibit the manufacture and sale of cigarettes and cigarette papers. Massachusetts and other states prohibit the sale or gift of cigarettes to minors under eighteen years of age; at least fourteen states prohibit sale of tobacco, in any form, to minor under 16, and Kansas prohibits the sale of tobacco, opium or narcotic in any form to a minor under twenty-one years of age.

22. The legal age of consent to carnal intercourse for a female child varies from ten years in one state to eighteen years in thirteen states.

23. Twenty-three states have enacted Juvenile Court Laws. In the great majority of the states the jurisdiction of the Juvenile Court extends to children of 16 or 17 years of age; in two states to boys 17 and girls 18; in three states it is 18 for both; and in one state 19 for both. In 19 states and the District of Columbia parents or others contributing to the child's delinquency may be punished by a fine or imprisonment.

24. Nevada is the only state without child labor laws. Nineteen states forbid employment of children under 14 in factories, stores, offices, laundries, hotels, theatres and bowling alleys. In six states the labor of a child under 16, in 18 states of a child under 14 and in 8 states of a child under 12 in mines is forbidden. Twenty-three states forbid employment of children during school hours. Night work is prohibited in 23 states under 16, in 7 states under 14 and 2 states under 12. Legislation is tending to prohibit the industrial employment of a child under sixteen.

25. Tendencies that are common in the legislation of a group or groups of states have been noted already in these pages. Broader inferences at this time seen unwarranted.

26. Some states have laws that are inoperative because the legal machinery for their enforcement is lacking; other states, though legally well equipped, are not enforcing laws on their statute books. In every community much depends on the men behind the law. An automatic law has not been discovered in this study.

27. A common result of a disaster or a grave scandal is a new law, which is sometimes so necessary that the wonder is that its need was not met by earlier remedial legislation. Preventive laws should be enacted before great expenditure of life, health or morals make legislation imperative. When a National Children's Bureau is established in this country, preventive legislation will receive deserved attention. Apart from the laws relating to birth registration, midwives, ophthalmia neonatorum, milk, and medical inspection, strangely few preventive laws were found in the legislation of the states.

(24) Suggestions

To be an American citizen in this year of our Lord, one thousand nine hundred eleven, is the greatest privilege on earth—except one, that of the American child, the American citizen of to-morrow. The words of Dr. McCoy, who has given over thirty years to both study and practical work in child-welfare, follow: "Have you ever given a moment to this great thought? The young people of America are the heirs to all the values of the ages, and what a marvellous

heritage that is. They are of a certainty, too, the men and women of destiny. In their hands in a short time will be all the interests of life and those that concern eternity. Religions, system of government, the armies and navies of the world that even now are shaking earth and sea and sky in thunderous throwing of the 'grim dice of the iron game,' the ceaseless breathings of the mighty engines of our industries, the passing ships of commerce, swift almost as the lightning from shore to shore, the courts, the schools, the philosophies, the arts, literature, the knowledge of natural forces and the power of their application—all will be theirs.

"The old or the middle-aged either have finished or are putting the last touches to their life-work. They are up or over the mountain and are going down into the soft glory of the sunset; but the young with glad shout are breasting the eastern hills with all the radiance of a new morning in their eyes and with the fires of a new purpose glowing in their hearts.

"And they must be fitted for their mission. For this reason the citizens come and deliberate together; for this reason they pile the public gold whereby to raise the school walls; for this reason they call scholarly men and women to guide and rule; for this reason have the book presses been groaning in labor this many a year; and for this reason are eager searches of enlightenment going down to the sea, and into the earth, and up in the sky, seeking new truths to bring back for their betterment" (30.11-12).

1. The first suggestion, the need of systematic legislation for children, will not meet with much opposition. Almost every one acknowledges the need of systematization which will preclude "crank laws" and make for sanity in child legislation.

2. The question how legislation for the children of the United States may be systematized is unsolved. The Federal right to legislate for the children of the several states is questioned under the present constitution. Until the Federal right is established by judicial decision or legislative amendment to the constitution, expediency must devise other methods.

A National Children's Bureau, which will do for the entire field of child-laws what the United States Bureau of Education is doing for school-laws, seems essential.

3. And a National Association for Child Legislation would be of inestimable assistance in the solution of the problem. Such an organization might serve to correlate the many independent organizations now urging child legislation. The union of the existing organizations would make a National

Association for Child Legislation a sturdy infant from birth, and the propaganda of the present organizations should become more effective throughout the entire country. A National Association for Child Legislation must be democratic. In this country no organization can succeed permanently and be controlled by any aristocracy—not even an aristocracy of learning. The success of the American Association for Labor Legislation, in one of its chosen fields, that of child-labor, might be studied to advantage by a National Association for Child Legislation.

4. To maintain even the semblance of the primacy of the home, legislation, that minimizes the functions of the home, should also emphasize the responsibility of parents. In some jurisdictions this tendency appears in the school laws and juvenile delinquency laws penalizing parents. It is a principle that should be kept in mind in child-legislation. Dr. Burnham writes: "A few pretty definite practical principles follow from this idea of the primacy of the home in education. They are enforced, too, apparently by the teachings of experience. We may formulate them as follows:

"First, the aim of school education is to supplement the education of the home.

"Second, the best of institutions is a poor substitute for a good home. Other things being equal, put the delinquent or neglected child in a home rather than a school.

"Third, charitable institutions are likely to be successful in the degree in which they approximate in their management the conditions of home life.

"Fourth, schools and other institutions should not as a rule usurp functions that belong to the home. In case this is desirable, it should be done in such a way that it will not be permanently necessary to do so.

"Fifth, teachers should always recognize the authority, the responsibility, and the general expert character of parents in the education of their own children. The numerous exceptions to this can be treated all the better by one who recognizes this general truth. On the whole, perhaps we may say that parents are not much more inefficient than we teachers, and certainly we can learn much from a child's parents in regard to the best methods for his education.

"Sixth, for the child's misdemeanors the parents as well as the child should be held responsible. This is coming to be recognized in child legislation, as, for example, in the Colorado law." (8.487.)

5. The welfare of the child and the parents demand that the home shall not be eliminated except as the last resort. The Pennsylvania Society is another that has come to share

"the modern economic thought that the normal condition of the child is in the home, even though the home be a poor one; the children often help their parents to reform, and the father and mother can in many cases be made to realize and feel . . . that upon them is the burden of responsibility to see that their children do not become in any sense a charge upon the community. Its belief in this theory is evidenced by the fact that in the year just closed 1,522 cases have been 'passed' over to what is technically known as 'supervision' cases, in which, perhaps, on the first visit the breaking up of the family seemed justifiable. Endeavors have, therefore, been made in every case to preserve the family as a whole. The results obtained by the visitors and agents in this work of reconstruction have been beyond belief" (31.143). And Dr. Chamberlain adds the following: "Indeed whatever can create a home environment, or something closely approximating to it, must be beneficial, as it is the most human method of 'reform' or 'regeneration'" (9.1.629).

6. As well intentioned but over-indulgent parents sometimes rear "the spoiled child," legislation that tends to coddle the child should be discussed for at least a year before its enactment.

7. The report of the Committee of the Commissioners on Uniform State Laws Entitled "An act relating to and regulating marriage and marriage licenses; and to promote uniformity between the state in reference thereto" (1.1130-1153), should be read by every legislator.

8. The recommendations of the Commissioners on Uniformity relative to migratory divorce and to divorce procedure and divorce from the bonds of marriage are deserving of serious consideration (39.323-324).

9. The "Act relating to desertion and non-support of wife by husband, or of children by either father or mother, and providing punishment therefor; and to promote uniformity between the states in reference thereto" (1.1179-1181), provides in Sec. VII for the payment "for the support of such wife, child or children, a sum equal to . . . for each day's hard labor performed by said person (the husband or father) so confined," and is an act that seems worthy of adoption throughout the Union.

10. Some statutory provision should be made in all states relative to the employment of mothers before and after childbirth.

11. Legislation should be enacted making it criminal to advertise any illegitimate child for adoption without first receiving permission from the State Board of Charity.

12. The school age should be raised so that any child under seventeen, who is neither attending school regularly or working, could be required to attend some school. Industrial schools or special schools would be required for this class. While statistics from a single city are far from establishing a norm, the writer's study of Juvenile Delinquency in Worcester, Massachusetts, may be of interest in this connection.[1] From June 1, 1907, to April 1, 1910, sixty-five per cent. of the boys and sixty-eight per cent. of the girls arrested for delinquency were between fourteen and seventeen years of age. There were 493 boys and 32 girls. Of the boys, 67 were attending school, 191 were working, and 236 or 49.7% were neither attending school or working, "just loafing around." Among the girls 22 girls or 68.7% were also "loafing," 9 girls were working and only one girl in the group was attending school. Both the boys and girls who were "loafing" were before the court for the more serious offenses.

Relative to the need of day truant schools in this country, in the same study 85% of the Worcester boys and girls in the Lyman School at Westboro and the State Industrial School at Lancaster stated that a connection existed between their own truancy and their own delinquency; and the majority of delinquents of school age studied were also truants.

13. Each child attending school should receive a physical examination at least once a year under the direction of an occulist, aurist, physician and dentist, and legislation should be enacted compelling parents to take reasonable remedial measures.

14. Laws should be amended to enable authorities to have supervision over all female school offenders until their majority is reached. In some jurisdiction this class of girls must be released at the age of fourteen and they return to environments that are sometimes especially dangerous at that age. These girls are really "neglected children." Relative to this age, President Hall writes: "In fine, puberty for a girl is like floating down a broadening river into an open sea. Landmarks recede, the water deepens and changes in its nature, there are new and strange forms of life, the currents are more complex, and the phenomena of tides make new conditions and new dangers. The bark is frail, liable to be tossed by storms of feeling, at the mercy of wind and wave, and if without chart and compass and simple rules of navigation, aimless drifting in the darkness of ignorance, amidst both rocks and shoals, may make of the weak or unadvised, wrecks or castaways" (17.507-8). Again President Hall says, "Caldo

[1]Juvenile Delinquency in Worcester, Massachusetts, by Thomas C. Carrigan, No. 54, 562, Library Clark University, Univ. Case C. 316.

finds that most prostitutes fall between the ages of fifteen and eighteen, which he terms the period of sexual vulnerability toward which chief effort should be directed." (17.431.)

15. Parents, when of sufficient means, should pay a reasonable amount for the support of their delinquent children confined in corrective State Institutions.

16. Superintendent of Institution, Chief of Police, Superintendent of Schools and Juvenile Probation Officer of the child's city or town, or a majority of them should have power at any time to release from any corrective institution any child not committed for a felony.

17. In order to give an opportunity to the working public, which is unable without loss of pay to meet the school authorities during the day, legislation should require the following offices in all cities to be open at least one evening in each week:

(1) Office of the superintendent of schools
(2) Office of the truant officer
(3) Office of the principal of all large grammar schools.

18. To better acquaint the teacher with the child's disadvantages out of school, legislation should provide that each teacher should be allowed to visit, *during the hours school is in session*, the home of each pupil at least once a month during the school-year. Teachers, generally, are overworked and underpaid, and the writer would be the last to suggest the imposition of another "fad." The suggestion on this page was born from investigating the unheralded and noble work of a woman principal. That her visits to the homes of her pupils have unmeasureably benefited both pupils and parents, many can testify; and that her teaching has steadily gained in common-sense tempered by sympathetic insight is the report of an expert, the writer has not the honor of her acquaintance. The divorce of the school and home is almost absolute in many places. Rarely any mother visits the school except to discuss discipline in some extraordinary case. Fathers are seldom visitors, and that is not surprising when it is remembered that most fathers would have to lose a part of a day's wages to visit school. The home and school are strangers too often as far as parents and teachers are concerned. This suggestion aims at making parents and teachers acquaintances, and then friends, in hope that both will mutually profit.

19. Records of all absences without excuse should be kept by every principal.

20. Every principal should be supplied with the name, age and address, and the school attending of every child of school age in his district.

21. Co-operation of school and police departments on truancy seem advisable in some places..

22. A juvenile census should be taken annually in cities and towns.

23. Every city should establish a free employment bureau for the purpose of securing positions for children above the school age, who need employment. To-day much is being said and written about vocational training. In most cities, when the working boy and girl, no matter how deserving, leave school, they must find their own positions and they generally take what they can get. This tends to make "misfits." The suggested bureau could have on file the names of employers in shops, stores, etc., who want worthy young people in their establishments. Think of the moral lever that the recommendation of such a bureau might be to the minds of the older school children, who are looking forward to "a good job." If diplomas, medals, etc., have been effective in moral education, it seems that the prospect of "a good job" at the end of school-life might be made at least as potent with the American child.

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